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T H E
L A W
O F
Corporations :

Containing the
Laws and Customs

O F
All the Corporations and Inferior Courts
of Record in *England*.

T R E A T I N G

Of the Essentials of, and Incidents to, a Corporation. Of Mayors, Bailiffs, Serjeants, &c. and their executing Process. Conusance of Pleas. Actions brought in Inferior Courts, Declarations, Pleadings, *Venue*, &c. *Habeas Corpus*, *Procedendo*, Bail. Errors in the Stile, Declarations, Pleadings, *Venire's*, &c. Actions brought by and against Corporations. Of Grants by or to a Corporation and of *Misnomer* in both. By-Laws, Customs. Disfranchisements and Causes of Disfranchisements. *Quo Warranto's*. *Mandamus's* and their Returns. Dissolution of Corporations. With the Explication of several Acts of Parliament relating to the same.

Together with the Stiles and Titles of most Corporations in *England*.

Necessary to be known not only by the Stewards, Attorneys, and other Members of the Body Politick; but by all the Professors of the Common Law.

L O N D O N, Printed by the Assigns of Richard and Edward Atkins, Esquires; for Isaac Cleeve at Serjeants-Inn-Gate in Chancery-lane, John Hartley next door to the Kings-Head Tavern in Holborn, Francis Coggan in the Inner-Temple-lane, and Thomas Dodgson over against Greys-Inn-Gate in Holborn. 1702.

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THE PREFACE.

I Remember not any Treatise designedly written on this Subject, except a little Duodecimo by Mr. *Shepard*, which extends not to the fortieth part of the Matters relating to Corporations.

I have not only shewed the nature of Corporations, and by what words erected, but the several sorts thereof.

And the power of executing Processes within the Jurisdiction, and the Duties of Officers, is matter of great Consideration, which I have not omitted.

I have been large in the manner of laying Actions in Inferior Corporations.

Carroll 1/7/54

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porations, and in Declarations, Pleas, Venues, &c. for that it is very instructive to Stewards and Attornies in the said Courts, and would save the many Errors in their Proceedings and Judgments, with reversing of which our Superior Courts abound.

How, and in what manner Actions are to be brought by or against Corporations, with Pleas and Declarations, are of great Use, and for want of due Understanding thereof many Cases have miscarried.

I need not mention that the knowledge of Grants made by or to a Corporation, is of great Use, and concerning their Attornments, Surrenders, and Acceptance of Rent, and especially Misnomers.

I have also collected particular Customs of several Inferior Corporations.

Besides several other things I have treated of here, as *Quo Warranto's*, *Mandamus's* disfranchised and dissolution

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lution of Corporations: For this Subject of Corporations takes in a great many Titles in other Books.

And as occasion is, I have explained many Acts of Parliament relating to the foregoing Titles.

If I am not mistaken, here is variety of Learning both useful and pleasant, and the Prefidents are for the most part New and Authentick.

Farewell.

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AND OF THE LONDON MEDICAL SOCIETY

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AND OF THE LONDON MEDICAL SOCIETY

C A P. I.

The Nature of a Corporation.

The Nature and End of Corporations. The difference between a Corporation and a Franchise. The several sorts of Corporations. Of sole Bodies Politick. Of Corporations Aggregate. Corporations Aggregate are sometimes General, and sometimes more Special. In what Sense a Corporation is an Executor, and in what not. Corporations Aggregate what they may do or not. What things are necessary and essential to the making a Corporation. Corporations commence Four Ways. Of pleading a Corporation by Prescription. Of Corporations by Act of Parliament. Of Corporations by the King's Charter. By what Words a Corporation may be erected. Corporation to a special Intent. Charter that a Corporation shall send Burgeses. Who to be said the Founder of a Corporation. Of the Name of a Corporation. Of the change of the Name of a Corporation, and that the new Body shall enjoy the Priviledges of the old Body. The Manner of Pleading when the Name is changed. What things are incident to a Corporation. Construction of Letters Patents.

A Corporation or Incorporation is a Body framed by Policy or Fiction of Law, and it's therefore called a Body Politick; and it's called an Incorporation or Body Incorporate, because the Persons are made into a Body

B

which

which endureth in perpetual Succession ; and are of Capacity to grant, sue or be sued, and the like. The Opinion of Chief Baron *Manwood* is odly express'd. Corporations are invisible, and immortal, and have no Soul ; and therefore no *Subpœna* lies against them, because they have no Conscience nor Soul. None can create Souls but God ; but the King creates Corporations, therefore they have no Souls. They cannot speak nor appear in Person, but by Attorney. 2 *Bulstr.* 233. *Tipping* and *Pexhal's* Case.

A Corporation is something more than a meer Name or Notion. 11 *Rep.* Sir *James Bags's* Case allows it to be such a Right, that every Member, separately considered, hath a Freehold therein ; and all, jointly considered, have an Inheritance which may go in Succession.

The general Intent and End of all Civil Incorporations is, for better Government ; either general or special.

The Corporations for general Government only, are those of Cities and Towns, Mayor and Citizens, Mayor and Burgessees, Mayor and Commonalty, &c.

Special Government is so called, because it is remitted to the Managers of particular things, as Trade, Charity, and the like ; for Government whereof several Companies and Corporations for Trade were erected, and several Hospitals and Houses for Charity. So *Trinity House* for regulating Corporations, College of Physicians, &c.

These are only considered in Abstract.

Difference between a Corporation and a Franchise.

But a Corporation, or Body Politick, is not only as a Franchise. A Body Politick is framed in similitude as a natural Body ; with a Capacity to take, hold, and enjoy, and act as a natural Body : it is a Capacity framed to be and act as one Person. But Franchises, and Liberties of all other Natures,
are

are Estates and Inheritances grantable and conveyable from one to another, but a Corporation cannot be so. Other Franchises and Liberties convey either some Profit from the King, as Felons Goods, Waifs, Strays, &c. or affect his Subjects, as Courts Gaols, Return of Writs, Fairs, Markets. But this of being a Body Politick, is only a Capacity to be a Person capable of having and holding what may be granted to it, and of granting and acting as a natural Body. Other Franchises are distinct and separate Estates; and if any one be forfeit, as they may by Use, yet the rest are not, except they are Incidents: Yet if the being of a Corporation is forfeit, all their Estates, Lands, Goods and Chattels are gone at once.

They are,

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|---|----------------------------------|---|
| <p>1. In respect of their Jurisdiction.</p> | <p style="font-size: 3em;">}</p> | <p>Ecclesiastical. { Regular, as Abbot, Prior and Covent.
Secular, Bishop, Dean Archdeacon and Parson.</p> <p>Lay. As Mayor, Commonalty, Bayliffs and Burgessees.</p> |
| <p>2. In respect of their Creation, and so every Body Politick is either,</p> | <p style="font-size: 3em;">}</p> | <p>Elective.
Presentative.
Collative, or
Donative, as Deans.
<i>1 Inst. 95. a.</i></p> |
| <p>3. In respect of the Subject.</p> | <p style="font-size: 3em;">{</p> | <p>Sole, or consisting in one single Person, as the King, Bishop, Parson, &c.
Aggregate of many, and they are of all Persons capable, as Mayor and Commonalty; or of one capable, as Head, and the rest as dead Persons in Law, as Abbot and Covent. <i>1 Inst 94. b.</i></p> |

The Law of Corporations.

The King is a Corporation of State of such Pre-rogative and Excellency, that he cannot give and take an Interest in Land without matter of Record.

3 *Leon.* 145.

If Land is given to a sole Corporation, he hath no Fee unless it be given to him and his Successors.

Aliter of a Corporation Aggregate, 1 *Inst.* 94.

As for Abbots, Priors and Covents, they are all dissolved by King *Henry VIII.* their Possessions were surrendered to the King, and by him many were translated into Bishops, Deans and Chapters. *Vide Infra.*

Regulars.

Those which were called Regulars, were such that lived under certain Rules, and vowed three things ; True Obedience to the Sovereign of their House ; perpetual Chastity, and wilful Poverty ; as

Seculars.

Abbeys Priories and Covent. Seculars are Persons Ecclesiastical, but because they live not under certain Rules of some of the said Orders, nor are Votaries, they for distinction sake were called Seculars ; as Bishops, Deans, Chapters, Archdeacons, Prebendaries, Parsons, Vicars, &c.

Sole Body Politick.

Sole Body Politick consists of one Person : As the King is the first Body Politick, he is *Persona mixta* ; So is every sole Corporation, as Bishop, Deans, Prebendaries, Heads of some Hospitals ; he hath a natural Capacity, as to purchase Lands to him and his Heirs, to sue for any thing in his own Right ; and he hath a Politick Capacity to take Lands to him in Succession ; he is *quasi* a Politick Trustee. What he enjoys, as such, is *in jure Episcopatus, Decanatus, Ecclesie*. The Church Revenues are intrusted in them to be preserved, and disposed, and recovered, as occasion shall be, for him and his Successors.

The Chamberlain of *London* is to some Purposes a Corporation sole.

It is a Rule in case of a Corporation sole, as Bishop, Parson, Master of an Hospital, that no Chattel, either in Action or Possession, shall go in Succession. but the Executors or Administrators of the Bishop shall have them: therefore a Bishop, &c. cannot take a Recognizance or Obligation but only in their Private, and not in their Politick Capacity, except in case where a Custom enables it to go in Succession; as in the case of the Chamberlain of *London*, for Orphanage Money, there it goes to the Successor.

But in case of Corporation aggregate of many, as Dean and Chapter, Mayor and Commonalty, &c. Chattels in Action or Possession go to the Successor, for they in Judgment of Law never die. 4 Rep. 65. *Fulkwood's Case*. Cro, *Eliz.* 480. *Bird and Welsford*.

Corporation aggregate of many Lay Persons, is an Assembly of many Persons gathered or joined together in a City, Town or Burrough, into one Fellowship, because they hold by mutual Consent (created by the King's Charter usually) to support the common Charge, to live under such Laws they shall agree upon to be governed by, to give or take any thing within the compass of their Charter, or to sue and be sued, and to have a Head and a Common Seal for this Purpose; as Mayor and Commonalties, Masters and Fellows of Colleges, some Guardians and Masters of Hospitals.

Corporations aggregate are sometimes more general, as where a whole Town is incorporate, and many Franchises given to it: Or more special and particular, where a Company of Trades-men only in a Town is incorporate, and some few special Franchises are granted to them for the better ordering and carrying on their Trade. Sometimes they are called Halls, Fraternities, Companies, Fellowships, &c.

The Nature of
a Corporation. A Corporation may prescribe for the Benefit of their particular Members, as well as a natural Person may prescribe for Common or Easement for himself and his Tenants; for though a Corporation aggregate is a thing in Imagination only, having no Body, nor Soul, nor Conscience; yet the Law takes notice, that the natural Persons Members of the Corporation, upon which the Corporation consists, are not Strangers to the Corporation, and they are Persons interested in all the Revenues and Privileges of the Corporation of which they are Members; and therefore if a Corporation bring an Action for any thing that they claim in their corporate Capacity, it's a principal Challenge to a Juror, that he is of Affinity to any Member of the said Corporation, though the Corporation it self can have no Kindred. 1 *Sand.* 143.

From what hath been said of Corporations aggregate, these Consequences ensue, which will farther illustrate the Nature of a Corporation.

A Corporation aggregate of many is invisible, immortal, and rests only in Intendment and Consideration of the Law: therefore Dean and Chapter cannot have a Predecessor or Successor, 39 *H.* 6. 13, 14.

They cannot commit Treason.

They cannot be Outlawed.

They cannot be Excommunicated; for they have no Souls.

They cannot appear in Person, but by Attorney.

Corporation aggregate cannot do Fealty; for a Body invisible cannot be in Person, cannot swear, 10 *Rep.* 32.

If Land held by Homage and Fealty are conveyed to a Mayor and Commonalty, or other Corporation aggregate, in this case they shall hold by Homage

The Law of Corporations.

7

mage and Fealty ; but shall not do them, 33 H. 8.
Brook Tit. Fealty, 15.

A Corporation cannot be seised to an Use.

An Alien, nor a Person attaint, nor a Corporation cannot at the Day be originally enfeoffed to the use of another ; for no use can be created out of their Seisin. 1 Rep. 133. a.

A Body Corporate cannot sue or be sued, nor answer in any Action but by Attorney. *Vide infra.*

A Corporation cannot wage Law. 9 Rep. 31. a.

Corporations aggregate of many are not capable of the Protection *Profecturæ* or *Moratura*, because the Corporation it self is invisible, and resteth only in consideration of Law. 1 Inst. 130. a. b.

Dean and Chapter are a Body Politick Spiritual, and are capable of a Prescription *in non decimando*. Note a Dean may be a Lay-Man, as was the Dean of *Durham*, by special License and Dispensation of the King ; but that case is rare. *Winch. fo. 65.*

Bodies Politick cannot be Joint-Tenants, or hold in Jointure with any ; but may be Tenants in Common. *Plö. 239. a.*

It was adjudged 1 *Rols Abridg. 71, 915.* That Mayor and Commonalty may be made Executors, against the Opinion of *Wentworth* : And yet others think they cannot be Executors, because they cannot prove the Will on Oath. However, the best way is to make an Executor in trust for them.

Farther to explicate the Nature of a Corporation, I shall enquire into the essential Parts of a Corporation, or what Things are necessary to the making a Legal Corporation.

- I. Lawful Authority.
- II. Persons to be incorporated.
- III. A Name of Incorporation.
- IV. A Place.
- V. Words of Incorporation.

I. A Corporation must commence Lawfully, or by Authority.

Corporations commence four ways.

1. By Common Law: as the King is a Body Corporate at Common Law.

Prescription or
Custom.

2. By Prescription or Custom: and so the Chamberlain of *London* is a Corporation by Custom; and the same Custom which creates and makes him a Corporation in Succession, as to the special Purpose concerning Orphanage, the same Custom enables his Successor to take and sue Recognizances and Obligations, &c. which were made to his Predecessor. 4 Rep. 65. *Fulwood's Case*. Hence it is resolved, the Usage or Prescription of Corporations, &c. That the Mayors, Bayliffs, Provosts shall be chosen by a Common Council, i. e. a certain selected Number of the principal of the Commonalty, or of the Burgeses, to avoid popular Elections, is very allowable, 4 Rep. 67. b. in the case of Corporations, though they they were incorporated by the Name of Mayor and Commonalty, or Mayor and Burgeses, &c.

That which hath been and continued time out of Mind a good Corporation, and hath all the Incidents and Badges of a good Corporation, shall continue so, although they cannot shew any Charter for it. For doubtless this was by Charter first, the which hath been since lost. But they that will have a Corporation by this Title, must have all the necessary Requisites to a good Corporation in their Prescription.

If a Court by Prescription be granted and confirmed by the King by his Letters Patents; this doth not destroy the Prescription; but the Stile of the Court may be by Prescription as before. *Mich. 10 Jac. B. R. Duffield's Case*.

A Corporation may prescribe for the Benefit of their particular Members, as well as a natural Person may prescribe for Common or Easement for himself and his Tenants. *Vide supra.*

The form of pleading a Corporation by Prescription is thus : Book of *Entries Tit. Quare Impedit* Of pleading a Corporation by Prescription

1. *quoddam Hospitale St. Mariæ de Bristow de uno Magistro & Conventu a toto tempore, &c. incorporat. fuerunt per Nomen Magistri & Convent. Hospitalis St. Mariæ de Bristow.* And it appears there, that they purchased Lands and Tenements, and were impleaded without any Prescription for one or the other; for that when they were incorporate by Prescription by a certain Name, then to implead and be impleaded, to grant and purchase, &c. are Incidents to a Body incorporate. 9 *Ed. 4.* 20. The Master of the Hospital of *Burton St. Lazar* prescribe, *quod ipsi & omnes Predecessores sui Magistri Hospital. præd. a toto tempore, &c. nominat. & cogniti fuer. &c. tam per nomen Magistri de Burton St. Lazar. Jerusalem in Anglia.* 10 *Rep.* 29, 30.

3. By Act of Parliament; as *Sutton's Hospital*, the College of Physicians, and many other Corporations.

4. By Charter.

Note, None but the King by Charter or in Parliament can make a Corporation, 10 *Rep.* 33. b. The King may give Power to a common Person to name the Persons and to name the Corporation; and when he hath so done, it is not said to be made by the common Person, but by the King, 10 *Rep.* 33. b.

If the Mayor and Commonalty of *London* prescribe to make another Corporation in the City, and their Customs are confirmed, yet this is not good without the King's Charter, 49 *Ed.* 3. 4. A Corporation

poration may be made out of another Corporation,
10 Rep. 31. b.

There must be a place named or supposed in *England*, and if there be not any such place in *England*, yet it is good; as of *Jerusalem* in *England*, 10 Rep. 32 b. 44 Ed. 3. 16. Reg. 23. Prior & hospital. *St. Johan. Jerusalem in Anglia*. So Prior & freres *sanctæ Mariæ de mont. Carmel. in Anglia*.

Corporation erected.

By what words.

THE King constituted the Town of *Dungannon* to be a free Burrough. *Et ulterius volumus declaramus & statuimus quod Inhabitantes Villæ præd. sint unum corpus Corporatum Præpositi 12 Burgens. & communitatis Dungannon & per idem nomen placitare possint & implacitari*, and that the proper Burgeßes shall elect Burgeßes. *Per Cur. quod volumus* is a good word of Grant; and this shall be an implied Grant to all the Corporation that the Provost and Burgeßes shall elect. But the Chief Justice and *Dodderidge* thought the contrary, for that in this case there was but an Ordinance to erect a Corporation, and no Grant alleged to any Person; so that this Clause, & *quod* is idle and vain, 11 Rep. 120. *Vide infra*.

H. 8. —. *Doctores J. C. T. L. in medicis concessit quod ipsi omnes homines ejusdem facultatis de & in civitat. Lond. essent re & nomine unum corpus & communitas perpetua seu collegium perpetuum. Et quod ead. communitas sive collegium singulis annis in perpetuum eligere possent & facere de communitate illa aliquem providum virum, &c. in Præsidentem, &c. Et quod idem Præsident & collegium sive communitas haberent successionem perpetuam & commune sigillum, &c. Capacity to purchase Lands.*

Et

Et quod ipsi per nomina Presidentis & collegii sive communitat. facultatum medicinæ Lond. placitare & implacitari potuissent, &c. And many other Priviledges which were confirmed by Act of Parliament. 8 Rep. Dr. Bonham's Case.

If there be words of the Incorporation sufficient in the Law its enough, for we are not restrained to a certain prescript form of words; and the word *incorporo* is not necessary, nor the words *fundo, erigo*.

Burgeffes or Inhabitants of a Vill or Burrough were incorporated, when the King granted to them to have *gildam mercatoriam*, 10 Rep. 30. a.

The King grants unto the Mayor of *Norwich* to be incorporated by the name of *Civibus*, this is a good name of Incorporation.

The King grants *probis hominibus Ville de Dale*, this is a good name of Incorporation, 4 Ed. 4 14.

The King gave Licence to *Ramsay* to grant a Rent, *cuidam Capellano*, this made a Corporation, 10 Rep. 28.

If the King grants Land to the Men or Inhabitants of *D. Hæredibus & Successoribus suis*, rendering Rent for any thing touching this Land; this is a Corporation, but not to other purposes, 21 Edw. 4. 56. 2 H. 7. 13. But if the King grant Land, *Hominibus & Inhabitantibus de Dale*. If they be not incorporate before, this Grant is void, 21 Edw. 4. 56. But if the King grant *Inhabitantibus de Islington*, to be discharged of Toll, this is a good Corporation to this Intent, but not to purchase, this being only matter of discharge.

Corporation to a special Intent.

The King may grant generally without mentioning of any to whom he makes the Grant, the Men of such a Village shall be a Corporation; as he may by, *constituimus* the Men of such a Village to be a Corporation, *viz.* Mayor and Commonalty, and such like; for he cannot grant the Corporation to the

the Men in their natural Capacity, and they are not a politick Capacity before the Grant, and so the Grant to them should be to no purpose; and therefore here it is good for the necessity, 2 *Roll. Abridg.*

The King may grant to *R. S.* that his Tenants of such a Mannor shall be a Corporation, naming the Corporation in certainty.

That a Corporation shall send Burgeses.

The King by his Letters Patents may ordain, That a Village which is not incorporate shall send Burgeses to the Parliament, to be elected by the Inhabitants of the Village; for this is the case of many of the Burroughs and Towns of England, who send Burgeses by prescription, who were never Incorporate, *Hob. 15.* The case was of the new Corporation of *Dungannon* in Ireland, *Hob. 14.* But this opinion of *Hobart* seems not to be Law, and was denied by all the Judges, 12 *Rep. 120.* The King constituted the Town of *Dungannon* to be a free Burrough, *Et ulterius volumus declaramus & statuimus quod Inhabitantes villæ præd. sint unum corpus incorporatum per nomen Præpositi, 12 Burgensium & communitatis Dungannon, & per idem nomen placitari possunt. Et quod ipsi Præpositi & Burgeses & successores sui habeant potestatem Elegendi duos Burgeses ad Parliament', &c.* The Question was, Whether this grant of Election was good, because it was granted but to parcel of the Body, (*viz.*) to the Provost and Burgeses, and not to the Provost, Burgeses, and Commonalty, *per Cur.* This power to elect Burgeses as an Inheritance, of which the Provost and Burgeses are not capable, for that it ought to be vested in the intire Corporation, (*viz.*) Provost, Burgeses and Commonalty; yet some were of opinion that *volumus* is a good word of Grant, and this shall be an implied Grant to all the Corporation.

A Corporation to special pu.

31 *Ed. 1. Charta mercatoria*, That Law makes all Strangers to take by this Charter as a Corporation,

tion, they as a Corporation to regrant to the King ; for to this purpose between the King and them, they are a Corporation, but not as to Subjects. Certain Merchants of *Holland* intending they were a Corporation by the said Charter, brought an Action of Account by the said name against their Factor, and it was adjudged it lies not except they names themselves by their names in certain.

If a Grant be *probis hominibus de Iffington*, and *successoribus suis*, rendring Rent, this is a Corporation to render Rent to the King, and not otherwise, 1 *Kol. Abridg.* 513.

Who to be said the Founder of a Corporation.

He who gives the Possession of a Corporation is the Founder, 10 *Co.* 33. b. 38. and all that is requisite to the erection of an Hospital, is but Incorporation and Dotation.

If the King and a common Person give Possession to a Corporation at the same time, the King shall be said to be the Founder by his Prerogative.

Name.

The name of a Corporation is as the name of Baptism to a natural Person ; nay, the Law requires more certainty in the name of a Corporation than in the name of any particular Person : When an Infant is born he is presently a perfect Creature, and the giving his Name is not Matter of Necessity, but Policy, for distinction. But as to a Corporation, the name is of the Substance and Essence of it, and without their name they are but a Trunk. It was said in the case of *Paschall* and *Marcoll*, by the Lord Chief Baron *Manwood*. 3 things are only to be respected in the name of a Corporation, 1. The Names of the living Persons;
who

who are the Name of the Corporation. 2. The name of the House or Place where they make their Abode, or where they make their Building, &c. 3. The name of their Founder. *Vid. infra sub Tit. Misnomer.*

Changed.

The new Body shall enjoy all the Privileges of the old.

If a Corporation had Franchises and Privileges by Grant or Prescription, and after they are incorporated by other names, as where they were Bayliffs and Burgessees before, now they are Mayor and Commonalty, or Prior and Covent before, and now they are translated to Dean and Chapter, altho the Name and Quality of their Corporation be altered and changed, and principally in the case of Prior and Covent, for of Regulars, which are dead Persons in Law, they are made Seculars; yet the new Body shall enjoy all the Franchises and Privileges which the old Corporation had by Grant or Prescription, 4 Rep. 87. b. as *Lutterells Case* the 3d Rep. Dean and Chapter of *Norwich's Case*, in 17 Edw. 3. 4. all Chapters were Monks; and notwithstanding the Translation of them into Prebends or Canons, and change of their Habit, the Advowson remains to them as before.

Note, The Statute of 35 Eliz. c. 3. all Letters Patents made for the Erection, Foundation, Incorporation or Endowment of any Dean and Chapter and Colledge, were and shall be reputed, taken and adjudged to have been good, perfect and effectual in the Law, for all things therein contained; and there is contained in them not only their Incorporation into a Dean and Chapter, but also a Grant to them and their Successors, that they shall enjoy all the Mannors, Lands, &c. 3 Rep. Dean and Chapter of *Norwich*.

The Grant of Incorporation by King *John* of the Burrough of *Yarmouth*, was made *Burgensibus*, with-

without naming their Successor, yet being as an old Grant its good, and so is *Civibus*, 2 *Brownlow* 292, 293.

The King may incorporate a Village by one Name, and afterwards by another name, and then they ought to use their name according to the second Corporation; and yet they shall continue their Possessions which they had by the other name, 21 *Edw. 4.* 59.

Trespas, *Pedibus ambulando, herbam conculcando*, The manner of
&c. The Defendant pleads the Place where, &c. Pleading when
was called *Littlefield* in *Darby*, and that the Bur- the name is
rough of *Darby* was an ancient Burrough, and that changed.
the Defendant, *tempore quo*, &c. & *diu antea*,
was a Burges of the same Burrough, &c. And
further, the Defendant saith, That the Burgeses of
the said Burrough, time out of Memory, till the
11th day of *July*, 14 *Car. 1.* were a Body incor-
porate by the name of Bayliffs and Burgeses of the
Burrough of *Darby*, and that upon the said 11th
day of *July*, *anno supradicto*, the King by his Let-
ters Patents under the Great Seal, changed the name
of the Corporation to the name of Mayor and Bur-
geses, &c. and then the Defendant lays a prescrip-
tion for common in the Corporation, *Sanders's*
Reports.

Debt for 15 *l.* the Plaintiff declares that the
Town of *Colchester*, time out of mind, was an an-
cient Burrough, and incorporated by the name of
Bayliff and Commonalty till the 11th year of
Car. 1. and then they were incorporated by the
name of Mayor and Commonalty, and enabled to
hold such Franchises as they formerly enjoyed by
any name, *Cart. Rep.* 63.

What

What things are incident to a Corporation, without special Grant or Prescription.

When a Corporation is duly created, all other Incidents are tacitly annexed to it, as is resolved in the Case of *Sutton's Hospital*, in their mentioning several particulars. As,

1. A Corporation is sufficient without the words to implead, or be impleaded.

2. To have Authority and Capacity to purchase ; but no Clause is added that they may Alien, for that is incident.

3. To have a Seal, &c. this is also declaratory ; for when they are incorporate they may make or use what Seal they will.

4. The Clause to restrain them to alien or demise, but in a certain Form ; this is an Ordinance testifying the desire of the King, but this is not but a Precept, and binds not in Law.

5. That the Survivors shall be the Corporation ; this is a good Clause to oust Doubts and Questions which may arise, the number being certain.

6. If the Revenues increase, that they shall be employed to the increase of the number of the Poor. This is but explanatory, as appears in the case of *Thetford School*.

7. To make Ordinances : This is requisite for the good Order and Government of the Poor, &c. but not to the essence of an Incorporation.

8. The licence to purchase in *Mortmain* is necessary for the maintenance and sustentation of the Poor ; for without Revenues they cannot live, and without Licence in *Mortmain* they cannot purchase lawfully ; and yet this is not of the essence of a Corporation, for a Corporation may be perfect without it.

So it was resolved in *St. Saviours Case*, 1 *Rol. Abridg.* 513. If the King make a Corporation by a certain name, without any words of Licence to purchase Lands, or to implead, or be impleaded, yet the Corporation may purchase, implead, or be impleaded well enough; for by the making of the Corporation, these necessary incidents are included.

But the King may make by special words a limited Corporation, or a Corporation for a special purpose: as if a Grant be *probis hominibus de Islington & successoribus suis rendant rent*, This is a Corporation to render the Rent to the King, and not otherwise, 1 *Rol. Abridgment* 513. A Corporation for a special purpose.

If the King create a Corporation, and doth not give any express power in the Letters Patents to make Laws, yet this power is incident to the Corporation, and it is included in the Corporation; but these Laws ought to be subject always to the Kings Laws of the Realm; for a body Politick cannot be governed without Laws.

If the King create a Corporation of a Mayor and Aldermen, with a Clause in the Patent, *quod super mortem vel remotionem alicujus Aldermani, liceat Majori & cæteris Aldermannis infra 8 dies proxim' post mortem vel remotionem, &c.* to elect another Alderman into the place, &c. although no Election be within the eight days after the death or removal of an Alderman, yet they may elect an Alderman at any time after; for they have power to elect another as incident to the Corporation created; for ancient Corporations have not such a Clause, giving power to elect, and this affirmative power doth not take away the implicit Power incident to the Corporation, *Pasch. 8. Car. 1. B. R. Hicks*, and the Town of *Launceston in Cornwall*, in the precedent case, that it shall be lawful for the Mayor and residue of the Aldermen to elect another within eight days, tho it be not limited that Construction.]

they or the greater number of them may elect; yet the greater number may elect: But if the Mayor, at the time of the death of the Alderman be in *London*, absent till after the eight days, and the Aldermen within the eight days come to the Deputy and require him to make an Assembly of them to elect another within the eight days, and he refuse, and upon this the greater number of the Aldermen assemble themselves together, without the Mayor or his Deputy and elect an Alderman, this is a void Election; for the Mayor ought to be present at it by the words of the Grant. *Hicks* and the Burrough of *Launceston*.

If the King grants a Court by Letters Patents to a Corporation of a Village to hold Pleas, &c. in this case tho there is not any Clause in the Patent to make Bayliffs or Sergeants to execute the process of the Court, and to return Juries, yet this is incident to their Grant to do it; for otherwise they cannot hold a Court; *Metcalf* and *Worseley*, 1 *Roll. Abridgment*, 526. But upon such Grant of a Court, if there be not any Clause in the Patent to make a Bayliff to execute a Writ of enquiry of Damages to be granted, this ought to be returnable in Court, and there the Enquiry ought to be made, for the Bayliff cannot execute it, in as much as he cannot give an Oath to the Jury or Witnesses, which the Letters Patents do not give him power to do, and this must be done in Court

C A P. II.

Of the Mayor, Aldermen, Sheriffs,
Bayliffs, Sergeants in Corporations
and Franchises.

Whether and how one Person may be Mayor and Town-Clerk at one and the same time. Sub-pœna out of the Exchequer served upon the Mayor of London, when he was executing his Office as a Magistrate, in case of High-Treason. Of an Alderman resigning his Office. A Common-Council, what. Of the Election of Mayor, Burgesses, &c. How to be made, whether by all the Corporation, or a select Member. Both the Sheriffs of London but one Sheriff. Newgate a Prison both for London and Middlesex. Commitment by the Sheriff of Middlesex is not a Commitment in London, tho the Sheriffs of London and Middlesex be all one. Of the Counters. Of Suits in the Sheriffs Courts. Of Bail and Sureties to the Sheriff. Where there are two Sheriffs, the Writ to be returned in both their Names. Of a non omittas, &c. Difference between the Form of a Sheriffs Return, and his Return to a Bayliff of a Franchise. Bail in what case not chargeable. Capias directed to an Officer of the inferior Court, he must return it. Its incident to the Grant, that the Corporation may make Bayliffs and Sergeants to execute Process, but not make a Burges to execute a Writ of Enquiry, and the reason of the difference.

IT was argued if the same Person may be Mayor or and Town-Clerk of the same Town,
C 2 where

A Mayor and
Town-Clerk
at one time.

where the Mayor is Judge of Record there, as *W.* had a *Mandamus* to restore him to the place of Town Clerk of *Sandwich* in *Kent*. They return that *W.* being Town-Clerk was elected Mayor there such a Year, and he entered the place, and now continues a Jurat' there, the which is a Justice of Peace. It was argued that the return is not sufficient, because the Offices are consistent ; for so it is in ancient Villages, by reason of the paucity of Inhabitants, 1 *Cro.* 138. *Contra* it was said, that they are incompatible, for the Mayor is Judge of Record, and the Town-Clerk is Minister, and ought to attend and be fined for his Faults ; and a Man cannot impose a Fine upon himself ; it seemed to the Court to be a good Return, 1 *Sid.* 305. *Warner* and the Mayor of *Sandwich*.

The Court of Aldermen may not elect one who is fit to be Mayor, with a purpose to fine him, 1 *Rol. Rep.* 109.

The Mayor of *London* claims to be Butler to the King at his Coronation, 1 *Rol. Rep.* 141.

Prince was committed by Sir *Rich. Brown* Lord Mayor of *London*, for that contemptuously and unseasonably he served him with a process of Subpoena out of the *Exchequer*, when he was executing of his Office as Magistrate and examining Offences of High-Treason in derogation of Magistracy, and in due execution of Justice, till such time as he should find Sureties for his good Behaviour ; and upon this return it was moved that he might be set at Liberty, because there did not appear (as was alledged) any good cause of Commitment ; and by *Hales* Chief Baron, he cannot be remanded because it does not appear by the return, that the Lord Mayor was then a Justice of the Peace, so that he had power to commit him for such a cause : but because the Process was unduly served upon

upon such a Person at such a time, the Court would not discharge him ; but there was no exeception taken to the Lord Mayor's committing a Person for an Affront done to himself. *Prince's Case, Hardr.* 182.

An Alderman of the City, by assent of the Corporation, may resign his Office to the Corporation, and they may choose a new Man, and the Corporation may take such Surrender *de jure*, without any power given to them by the Charter to take it, 2 *Roll. Abridg.* 456. Alderman resigning his Office.

No Corporation shall be compelled by Writ out of the Kings Bench, to elect any Man to be an Alderman ; for the Kings Bench is not to examine who is fit, *Shuttleworth's Case*. The Commonalty in the vacancy of a Mayor, are to this purpose a Corporation to choose a Mayor to perfect the Body ; and it is the only corporate Act that they are by Law enabled to do without a Mayor, and this Right may be forfeited.

Upon the erection of all Corporations the power of assembling, deliberating and determining for the Corporation is either intrusted with a few particular Members, whose continuance in that Trust, (both as to the present Members and the Succession of them) is directed by the several Charters, or else it is entrusted with the whole Body, and that either expressly, or by implication of Law, where the Charters are silent therein, and these constitute the Common Council. In such cases where this power is transferred, those Members to whom it is transferred constitute the Common Council, and their Acts were of the same Obligation as where all meet. A Common-Council, what.

Where divers Cities, Burroughs and Villages were incorporated by Charters, some by the name of Mayor and Commonalty, or Mayor and Burgeses, &c. or Bayliffs and Burgeses, or Aldermen Election of Mayor, &c. and

The Law of Corporations.

and Burgesses, or Provost and Burgesses; and in the said Charters it is prescribed, that the Mayor, Bayliffs, Aldermen, Provosts, &c. shall be chosen by the Commonalty or Burgesses, &c. if the ancient and usual Election of Mayors, Bayliffs, Provosts, &c. of a certain select number of the principal of the Commonalty or Burgesses commonly called the Common Council, and not in general by all the Commonalty and Burgesses, or so many as would come to the Election were good in Law, inasmuch as by the words of the Charters the Election shall be indefinite by the Commonalty, or by the Burgesses, which is as much as to say, by all the Commonalty. *Per Cur.* such ancient Election were good and well warranted by their Charters, and by the Law; for in every Charter they have power to make Laws and Ordinances, for the better government of their Cities and Burroughs, by force whereof, and of avoiding popular Confusion, they by their common Assent constitute and ordain, that the Mayor, &c. shall be chosen by a select number of the principal of the Commonalty, &c. and prescribe also how such select number shall be chosen; and although such Constitution or Ordinance may not now be shewed, yet it shall be presumed and intended in respect of such special manner of ancient and continual Election (which special Election cannot commence without common Assent); so are the usages in *London* and *Norwich*, &c. The Case of Corporations. *M. 40 & 41 Eliz.*

Both the Sheriffs of *London* but one Sheriff.

Both the Sheriffs in *London* are in Law but one Sheriff, and the one is not of *London*, and the other of *Middlesex*, as is vulgarly supposed. *Hub. 70. Lamb and Wiseman.*

Return by one Sheriff.

And the Sheriff of *London* is known in Law to be two Persons; therefore if one Sheriff of *London* do make his Return without his Fellow, this is not helped by Jeofail, this being as no Return at all,
or

or as a Return without the Sheriffs name subscribed.

Now it a very useful and not a very common Observation, Upon a *Cap. ad satisfaciend.* to the Sheriff of *Middlesex* to take *J. S.* if the Sheriff take him and put him in *Newgate*, which is the common Prison for *London* and *Middlesex*, and after another Execution comes to the Sheriff of *London*, although the Sheriffs of *London* are also Sheriffs of *Middlesex*, and *Newgate*, where the Prisoner is, is the Prison for both Counties, yet the Prisoner is not said to be in Execution upon this new Writ in *London*, neither may the Sheriff of *London* serve it upon him, because he is in another County. For when the Commitment is to *Newgate*, by force of a Writ to the Sheriff of *Middlesex*, he may not be said in any respect to be in the County of *London*, for the Counties continue several and the Prison several, in respect of the several Commitments; for there are two several sides and a partition between them. 1 *Rel. Abridg.* 894. *Cous. Case. Tr.* 16 *Jac. B. R.*

Newgate a Prison both for *London* and *Middlesex*.

Commitment by the Sheriff of *Middlesex* is not a Commitment in *London*, tho the Sheriffs of *London* and *Middlesex* are one.

By the Custom of *London* the Writ of Execution is directed to the Sheriffs of *London*, and not to the Coroner, who is the Mayor, 2 *Rel. Abridg.* 806.

The Plaintiff in Assault and Battery in his Replication saith, That the City of *London* is an ancient City, and hath Pleas, and that there was a Plaint in such a Court before *F. M.* by vertue of which Process the Plaintiff was taken; he should have alledged a Custom to hold a Court before the Sheriffs, and that *F. M.* was then Sheriff. If it is said, *coram F. M. uno vic'* its well enough, there being two Courts, tho but one Sheriff, 1 *Keb.* 564. *Osburn and Parker.*

If an erroneous Judgment be given in any of the Sheriffs Courts of the City of *London*, the Writ of Error to reverse this Judgment must be brought in the *Hustings* before the Lord Mayor, for that is the

Error. *Hustings.*

Superior Court, *Pract. Reg.* 124. 4 *Inst.* 247.

Note, *Quolibet breve quod tangit liberum teneamentum dirigitur Majori & Vicecomitibus, & alia brevja tantum Vicecomitibus.*

Counters.

The two Sheriffs of *London* do each of them keep a Court of Record, where they hold Plea of all personal Actions, and the two Prisons (called the *Counters*) belong to them, and they have two Court days in every Week apiece; for the *Woodstreet* Counter on Wednesdays and Frydays; for the *Poultry* Counter on Thursdays and Saturdays.

Suits in the Sheriffs Court.

As to Suits in the Sheriffs Court, the usual practice is, to enter an Action in the Office, for that purpose at one of the *Counters*, which Action must be entred with care. For it is the Original in that Court by which you must declare, and from which there must be no variance.

Bail.

And when an Action is entred then any one of the Sergeants may arrest the Defendant, and bring him into Custody until he find Bail to answer the Condemnation, which Bail is to be taken by one of Clarks fitters. But note, By the Custom of *London* the Defendant may be arrested after entry of the Plaint in the Porters Book, before the Entry of it in Court before the Sheriff; and after Plaint entred the Sergeant may arrest without Precept: The Sergeant need not shew his Mace because he is sworn and known, altho not to the Party.

Sureties to the Sheriff.

It is the common course in *London*, upon Plaint before the Sheriffs and a Precept to the Sergeant to arrest one, the Sureties shall be found and offered to the Sheriff, not to the Sergeant, and so in inferior Mayors Courts, *Widow* and *Clarks* Cafe. Therefore in Faux Imprisonment the Defendant pleads the Custom of *London*, that on entry of a Plaint in *London*, a Sergeant may by parol, or otherwise, arrest the Defendant to answer the Plaintiff, and shews that J. S. entred a Plaint in the Counter against

gainst the Plaintiff, and that he was a Sergeant, and arrested him and carried him to the *Counter*, till he found sufficient Bail. The Defendant confesseth the Custom, the entry of the Plaint and Arrest, and saith, That he offered Security to the Sheriff, and of this he gave notice to the Defendant, and yet he carried him to the *Counter*; the Defendant demurs. *Per Cur.* the Sergeant upon tender of Bail to the Sheriff is not bound to set the Party at large, unless the Sheriff send a Warrant, testifying this to him. *Jones 216.*

If a Writ be directed to a Place where there are two Sheriffs, as *London, Bristol, &c.* and one of them doth return the Writ, it is insufficient; for it must be returned in both their Names; tho one (according to Custom) may execute it. *Br. Officer, 22.*

But if a Warrant be directed to two Bayliffs of a Franchise to execute a Writ, the Return of one of the Bayliffs in the name of both is sufficient. *Tr. 39 Eliz. Palmer and March.*

The Bayliff of a Liberty must return his Precept, and set his name to it; but a Bayliff Itinerant need not.

In all cases where the King is Party, as in *Cap. inlag. &c.* the Process must be with a *non omittas propter aliquam Libertatem*; and there the Bayliff shall not send his Precept to the Bayliff of a Liberty, but shall enter himself *ex Officio*, as for apprehending of Felons, or in any Action at the Suit of the King, and always on Extent, a *Stat. Merchant. Dalt. 456.* But in other Cases where the King is no Party, there, if without a *non Omittas* the Sheriff shall enter a Franchise, to execute the Kings Process, the execution of the Process shall be good, and the Lord of the Liberty shall have an Action against him, but the Party arrested shall have no remedy.

In

In a Writ of Waste and Redisseisin the Sheriff must enter the Franchise, to make enquiry, &c.

Return.

The common Form of *Vic. Return* is *Feci quoddam Warrant'*; but to the Bayliff of a Liberty *Mandavi*, &c. 2 *Rol. Rep.* 263. *Præcipe quod reddat* was awarded *Vicecomitibus Glouc. versus*, A. B. & C. The Sheriffs return that the said C. was one of the Sheriffs of the said City. *Ideo ego præfat' C. &c. alter Vicecom' Civitat' præd. me ipsum secundum exigentiam brevis istius Summonere non possum. Resp.* It was adjudged a good Return, *Bendl. N.* 160. *Loffe and Kelbridge.*

Bail in Case
not chargeable.

Scire Facias against the Defendant as Bail for one *L.* in Action brought in *Lynn*; it was Debt for 70 *l.* by the Plaintiff against *L.* *Capias* issued against him directed to the Serjeant of the Mace there, who returned *cepi Corpus*, and that the said *L.* *secundum consuetud. Villæ. præd. invenit ei se curitatem (viz. J. H. who is dead)* and the Defendant, *ad comparand.* and if he were condemned to satisfy the Debt, or render himself to Prison, it was so far proceeded in the said Court that Judgment was given for the Defendant, and thereupon a Writ of Error brought, and Judgment reversed; and now because *L.* did not pay the Debt nor render himself to Prison, this Action was brought. Upon Demur, *per Cur.* this Bail found before the Serjeant, tho it be alledged to be *secundum consuetud. villæ.* is not good. For the Bail being matter of Record cannot be found before any but the Judge of the Court; but the Bail for Appearance only may be taken by the Serjeant, and for this cause the Bail is not chargeable. *Cro. Jac.* 94.

Return.

If a *Capias* be directed out of an inferiour Court, to an Officer of the same Court to take *J. S.* and he takes him, and does not return the Process, he is a *Trespasser ab initio*; for it is his own fault, because he is the same Officer that ought to return

it

it, and he is as Sheriff in that Jurisdiction. 2 *Rolls Abridg.* 563.

If the King grants a Court by Letters Patents to a Corporation of a Village, to hold Pleas, &c. in this case tho there is not any Clause in the Patent to make Bayliffs or Sergeants to execute the Process of the Court, and to return Juries, yet this is incident to their Grant to do it, for otherwise they cannot hold a Court, *Metcalf and Worsely*, 1 *Rolls Abridg.* 526. But upon such Grant of a Court, if there be not any Clause in the Patent to make a Bayliff to execute a Writ of Enquiry of Damages if a Judgment be given by which a Writ of Enquiry is to be granted, this ought to be returnable in Court, and there the Enquiry ought to be made, for the Bayliff cannot execute it, in as much as he cannot give an Oath to the Jury or Witnesses, which the Letters Patents do not give him power to do; and this must be done in Court.

C A P. III.

Conusance of Pleas.

Three Sorts of Conusance of Pleas. Conusance denyed to the City of Worcester in Trespass brought by the then Lord Chief Justice Anderson, and why. The Claim must be put in by way of Plea, and not upon Oath. Charter of Oxon was to proceed in all Pleas and Quarrels in Law or Equity. How to be extended. Whether a Suit by Quo Minus shall bar the Privilege of the University who have Conusance. Grant that a Village shall have a Retorna brevium. Certificate to be made upon one's own Knowledge. A Painter matriculated in Oxon on purpose to avoid an Office, not good. By the Conusance of Personal Actions they shall not hold Plea of Ejectione firme, and why. How a Corporation Defendant is to give in Bail. Stat. 31 Ed. 1. of Wines, and the Stat. 7 Ed. 6. c. 5. explain'd. Tryal of Conusance how it shall be. The Warrant may be in Latin. Habere cognitionem, how far it extends. Conusance when to be demanded, and how. If demandable in a Transitory Action. President of a Plea of Conusance by the Vice Chancellor of Oxon.

THERE are three sorts of Conusance of Pleas; 1. *Tenere placita*, which doth not oust any other Court of Jurisdiction; but creates a concurrent Jurisdiction. The 2d. is *Cognitio placitorum*, as when the Plea is commenc'd here, of which the Conusance belongs to another Court. 3. There is a Conusance of Pleas with an exclusive Jurisdiction, as in the case of *Castle*

ſle and *Litchfield*, that no other Court ſhall hold Plea, &c. and this is a *Superſedeas* to any other Court. The ſecond is to be taken advantage of by way of Plea, and after Tryal the Cauſe to be remanded; and the laying of the Action in another another Place (as in *Lond.*) is not material, becauſe they muſt begin *de novo* *Hard.* 509, 510.

The Lord *Anderson*, Chief Juſtice of the Court of Common Pleas, brought an Action of Treſpaſs by Bill, for breaking his Houſe in the City of *Worceſter*, againſt one *A.* Citizen of the ſaid City. Now came the Mayor and Commonalty of the ſaid City and ſhewed their Charter granted to them by King *Edward VI.* and demanded Conuſance of Pleas: and by the award of the whole Court Conuſance ſhall not be granted; becauſe the Priviledge of this Court, whereof the Plaintiff is a principal Member, is more ancient than the Patent upon which the Conuſance is demanded: and the Conuſance was denied; and the Juſtices, Clerks and Attorneys of this Court ought to be here attending to do their Offices and Services as belongs unto them, and ſhall not be impleaded or compelled to implead others elſewhere than in this Court. And this Priviledge was given this Court on the original Erection of it. 3 *Leon.* 149. The Lord *Anderson's* Caſe.

A Bill in Chancery was brought to have Account of ſeveral Sums of Money which the Defendant, Tutor to the Plaintiff's Son, had received towards the neceſſary Occaſions of the Son. The Chancellor of *Oxford* by Inſtrument in Writing, ſet forth the Priviledge of the University-Charter and Confirmations by Act of Parliament, and the Defendant was a Scholar and Reſident, and that they had a Court of Equity, and prayed the Plaintiff might be diſmiſs'd. The Lord Keeper did not allow the Claim; ſaying, it muſt be put in by way of

Claim to be put of Plea, but not upon Oath. *Cases in Chancery*,
 in by way of 237. *Pratt and Taylor*.
 Plea, and not
 upon Oath.

Dr. Crowther's Case.

The Bill sets forth a Contract under Seal with the Defendant for making a Lease of certain Lands in *Middlesex*, and to have an Execution of the Agreement. *Dr. Crowther* pleaded he was Head of a Colledge in *Oxon*, and sets forth the Charters of 14 R. 2. and 14 H. 8. empowering the University to enquire and proceed in all Pleas and Quarrels in Law and Equity (except concerning Freehold) where a Scholar, their Servants and Ministers *sunt una partium, &c.* *Ita quod Justiciarii de B. R. seu de Communi Banco vel Justiciarii ad Assisas non se intromittant, &c.* and the Confirmation by the Act of 13 Eliz. and concluded his Plea to the Jurisdiction of the Court: The Plea was over-ruled *An.* 1683. because the Charter ought to be extended to Matters at Common Law only, or to Proceedings in Equity that might arise in such Cases, and not to meer Matters of Equity, which are Originally such, as to execute Agreements in *Specie*, &c. and further Conusance of Pleas is never to be allowed, unless the Inferior Jurisdiction can give remedy. Here they can only Excommunicate or Imprison, but cannot proceed to Sequestration of Land in *Middlesex*. If the Matter lay only in Damages it might be allowed them, because the Jurisdiction is given all over *England*; but this is not intended where the Suit is for the thing it self, and when it is out of their reach. 2 *Ventr.* 262. *Sir Tho. Draper vers. Dr. Crowther.*

Upon a Bill in Equity as Debtor and Accomptant against a Person who has the Priviledge of the University of *Oxon*; the Defendant pleaded his Priviledge, and a Copy of their Charter of Exemption

was

was shewn, which exempts them from the Justices of the one Bench or the other, and from other Justices, but not a Word of the Exchequer : Wherefore the Court was of Opinion that the Defendant ought to answer over, and that the Defendant ought not to be allowed the Priviledge of the University, and that it sufficed for the Plaintiff to call himself Debtor and Accomptant without more. Also an Accomptant has a more particular Interest in his Priviledge than a Debtor, although his Debt may be taken in Execution for the King ; because by 1 R. 3. c. 11. an Accomptant is not suable elsewhere. And here the Priviledge of an Exemption granted the University has not these Words, *Licet sangat nos*, and 1 Crook 73. Hardr. 188. *Wilkins and Shalcroft's Case*. But in *Castle and Lechfield's Case*, an Action on the Case upon *Indebitatus assumpsit* for Money for Tobacco, The University of Oxford demanded Conusance of the Cause, by reason of a Charter granted to them 14 H. 3. and confirmed by Parliament 13 El. whereby is given to them Conusance of all Suits any where against any Scholar, Servant or Minister of the University, depending before the King's Bench, Common Pleas, and others there mentioned, though the Matter concern the King ; but the Court of Exchequer is not mentioned in that Clause ; but the Clause whereby are granted to them all Fines imposed upon any of them in any Court, there the Court of Exchequer is named. And the Question was, whether Conusance shall be allowed by B. R. in this Action, *per Hales & Cur.* the Demand of Conusance is good, and the Suit hereby *Quo Minus* is no hindrance of the Priviledge of the University ; and they held the Grant extends to this Court, because the Grant begins with Superior Courts, as King's Bench and Common Pleas, which Words are sufficient to comprehend this Court.

Priviledge not
allowed against
the Court of
Exchequer.

The

The Town of *Derby* brought an Action on the Case by the Name of the Mayor and Bayliffs of the Village of *Derby*, & *Burgenses ejusdem Ville*, against *Foxley*, late Sheriff of the Town of *Derby*, and shew it to be an ancient Village, and hath been a Corporation time out of mind, and the Name of their Corporation was Mayor and Burgeses of *Derby*; and 9 *fac.* it was confirmed by that Name; and by the same Patent it was granted that they should have *Retorna brevium* within the same Village, and that the Sheriff of the County *ne intramitteret*, and that after the Defendant being Sheriff of the County, returned into the Roll, and served Process, and set it out in certain, and the Defendant demurred. Two Points were in the Case: 1. The Name is Mayor and Burgeses of *Derby*, and they brought an Action by the Name of the Mayor and Bayliffs of the Town of *Derby*, & *Burgenses ejusdem Villæ*. This is no such Misnomer as to abate the Writ; for its all one in Substance; every Burrough is a Village, but not *è converso*, and this Word *Burgensis* shews it to be a Burrough. 2. If the Grant be good. It is good, the King may appoint that a Town shall have *Retorna brev.* 2 *H.* 4. 130. *Cok. Entr.* 541. 3. Whether the Sheriff ought to take notice of it at his Peril; and it seems he ought, because it is of Record: The Sheriff enters into a Liberty, and the Grant is shewed to him, if he does Execution it is good; but the Lord of the Franchise shall have an Action on the Case against him, 14 *H.* 8. 5. So if a Grant be to a Town, that they shall not be Jurors, and it is shewed to the Sheriff, and he notwithstanding returns them, an Action of the Case lies against him; and Judgment was given for the Plaintiff. 1 *Rolls Rep.* 118. Town of *Derby* against *Foxley*.

Misnomer.

Burrough.

*Retorna Bre-
vium.*

D. being

D. being sued pray'd his Priviledge; because he is a Commoner in *Exeter-Colledge* in *Oxon*; and brought Letters under the Seal of the Chancellor of *Oxon*, certifying their Priviledge; and he certifies that *D.* is a Commoner, as appeared by the Certificate of *Dr. Prideaux* Rector of the said Colledge; whereas he ought to certify that he is a Commoner upon his own Knowledge, and not upon the Certificate of another; and after Certificate was made of his own Knowledge, and then allowed to be good. The Priviledge was allowed, though the Certificate is not that at the Time of the Action brought he was a Commoner, but that now he is a Commoner. *Godb. 404. Fryer and Dew's Case.*

A Towns-Man of *Oxon* was chosen into an Office by the Corporation, and refusing to hold he incur'd a Penalty according to the Usage of the Place; and for which an Action of Debt was brought, and a Charter was shewed that the Members and Servants of the University should be sued in the Court before the Vice Chancellor, and not elsewhere: and a Certificate was produced from the Chancellor of *Oxon*, and directed to the Chief Justice & Sociis suis Justitiariis de Banco, that the Party was matriculated and registred in the University, and Servant to *Dr. Irish*; but this being but two Days before he was chosen into the Office, though he was a Painter, yet had dwelt in the Town, and no Servant Attendant to *Dr. Irish*, but had his dwelling House and kept Shop in the Town, and that he procured himself to be admitted to hinder the Remedy the Town had against him for not holding the Office, the Priviledge was denyed. 2 *Ventr. 107. The City of Oxford's Case.*

Ejectione Firme upon a Lease of a Messuage in *Oxon*, the Defendant being Principal of *Gloucester-Hall* in *Oxon*, pretended he was a Priviledged Person, and ought to be sued before the Vice Chancellor

lor in *Oxon*, according to the course of Proceedings there, *Secundum Morem Universitatis*, and according to the Charters granted to the Universities in 3 R. 2. and 14 H. 8. confirmed by Parliament in 13 *Eliz.* and shews their Charters, and that they had Conusance of all Contracts, Covenants, Quarrels (except concerning Freehold) and this being a personal Action they ought to have Conusance thereof. *Per Cur.* the Vice Chancellor hath not any Jurisdiction in this Cause, nor shall hold Plea thereof; for in this Action he shall recover Possession, and shall have an *Habere fac. Possessionem*; and thereby he that hath the Freehold may be put out of Possession. *Cro. Car.* 87. *Halley's Case.*

Indebitat. Assumpsit against the President and Scholars of *Magdalen-College, Oxon*, for 60 *l.* due for Butter and Cheese sold to the Colledge: The Chancellor demands Conusance by Virtue of Charters and Priviledges granted to the University by the King's Progenitors, and confirmed by Act of Parliament; whereby, amongst other things, Power is given them to hold Plea in personal Actions wherein Scholars or other priviledged Persons are concerned, and conclude with an express Demand of Conusance. It was Objected, If this Conusance shall be allowed there will be a Failure of Justice; for the Defendants being a Corporation cannot be arrested, they can make no Stipulation, the Vice Chancellor's Court cannot issue a *Distringas* against their Lands, nor can they be excommunicated. But *per Cur.* the Priviledges granted by Patent are good in Law, whether confirmed by Parliament or not; and the word *Person* doth include Corporation, 2 *Inst.* 536. Neither is a Demand of Conusance in Derogation of the Common Law, nor will there be a Failure of Justice, for when a Corporation is Defendant they make them give Bond, and put in Stipulators that they will satisfy

Persona

How a Corporation is to give Bail.

satisfy the Judgment, and if they do not perform the Condition of their Bond, they commit the Bail. *Mod. Rep.* 163, 164.

Information in the Exchequer exhibited against *Cambridge*.
B. of Cambridge upon *Stat. 7 Ed. 6. c. 5.* of Wines, and selling them against the Purview of the said Statute. The Defendant Pleads, That *R. 2.* in the fifth Year of his Reign granted unto the Chancellor and his Deputy, and the Scholars of the University of *Cambridge*, *custodiam Assise Panis & cervisie & correctionem & punitionem eorundem.* And Queen *Elizabeth* confirmed the said Grant, and which was afterwards confirmed by Act of Parliament *13 Eliz.* and so pleaded to the Jurisdiction of the Court: and it was demurred. *Per Cur.* they of *Cambridge* have not *Assisam ipsam*, but *custodiam Assise* only; *i. e.* that the Assise set down by the Queen and her Council be well kept, and that no other Price or Measure be used in the uttering of Wines: The University cannot appoint another Assise than that which is set down by the Statute *51 H. 1.* but to take care that the said Statute be well executed in such Assise. *Stat. 31 Ed. 1.* of Wines, *vide.* The University have *Custodiam* only of the Survey of the Assise, and Execution of it, and Authority to punish Offences against the said Statutes, and not otherwise. And as to the Statute *7 Ed. 6. c. 5.* by which it is provided that the said Statute shall not be prejudicial to any of the Inhabitants of *Oxon* and *Cambridge*, or Scholars, to impair their Liberties, &c. the same ought to be intended that the Liberties which the University had before by the Grant *ut supra*, is to punish such Offences against the Assise, according to the old Statutes; for the *Stat. 7 Ed. 6. c. 5.* being in the Affirmative, doth not take away the Punishment appointed by any other Statute, but doth continue the same. *3 Leon. p. 214. Baxter's Case.*

Trial of Conu-
sance.

In an Action, if the Defendant claim his Priviledge for that he is a Scholar of the University of *Oxon*, and the Parties are at issue whether he be of such a Colledge or Hall; this may not be tried by the Certificate of the Vice Chancellor and the Principal of such Hall or Colledge, but *per Pais. Monday and Vaughan. 2. Rol. Abr. 583.*

The Chancellor of *Oxon* demanded Conufance of the Action between *Gayton* and *Raydon*, being a Debt between the Beadles of the University, by special Warrant to Attornies, and brought into Court by Rule, which being put in the Form of a Plea, the Court granted. *1 Keb. 317.*

In Action on the Case laid for Words in *London*, after Imparlance, and before Plea farther than in Paper, the Bishop of *Ely* by special Warrant to Attorney shewed in Court, and Charter pleaded, demands Conufance, as *40 Ed. 3. 10 b.* suggesting that the Words were spoken in *Ely*, which the Court doubted, the Action being transitory; but agreed that of things local he might do so. *Sid. 103.* And in this Case a *Respondeat Ouster* was awarded; for the Warrant was in English: And as to the Matter, Conufance cannot be demanded in transitory Actions, as *Dove* and *Rogers* Case, *1 Keb. 473.*

If Conufance be demanded by Prescription, Allowance must be shewed in *Eyre*, or here in *B. R.* Vouching the Roll and Allowance in *B. C.* is no Allowance in *B. R.*

Also *Habere Cognitionem* is not sufficient, without it be *coram quibuscunq; Justiciariis. 3 H. 6. 27.*

After Continuance by the Court Cognizance may be demanded; but never after Continuance by Prayer of the Party. *Vid. ibid.*

Serjeant *Hitcham* was denied Conufance, because the Warrant was left at the Attorney's Chamber.

Conufance

Consuſance of Pleas ought to be demanded by an Attorney by Warrant of Attorney in Latin, and the Attorney ought to have his Grant in Court. *Sid.* 103. Bishop of Ely's Case. Consuſance how
to be demand-
ed.

*Plea of Conuſance by the Vice-Chancellor
of Oxon.*

Tho. Caſtle Plaintiff, Soladel Leichfield Defendant.

ET p̄dice S. L. p C. Attornae suum veni
& super hoc venit Thomas Fell sacre
Theologie Professoꝝ Almc Univerſitatis O-
xon Vice-Cancellarius p W.H. Attornū suum
ad omnia & singula Libertates & Privilegia
sua petens & calumpniandū psequendū & de-
fendendū Et petit inde Libertatem suam scilicet
ad habendū cognitionem placiti p̄dice eozam
ipſo Vice-Cancellario vel Deputato suo a-
pud Oxon tenendū quia die quod Dom̄ Hen-
ricus nuper Rex Anglie octabus p Literas
suas Patentes in debita juris forma confeci
& sub magno Sigillo suo Anglie Sigillaꝝ
gerend date apud Westm̄ primo die Aprilis
Anno Regni sui decimo quarto concessit tunc
Cancellario & Scholaribus p̄dice Univerſita-
tis Oxonie & eozum Successoribus (inter
alia) quod idem Cancellarius Commissarius
ejusve Deputatus & eozum Successores seu
Beneſchal Subbeneſchal & alii Iudices per
dictum Cancellarium & Successores suos
per Literas suas Sigillo Officii sui sigillaꝝ
deputat tam de omnimodis Transgressioni-
bus & aliis Malefactis quibuscunq; quam
de imprisonment extorsionibus conspiracio-
nibus confederacionibus inconvenientiis
falsis Alleganciis computibus contractibus

& injuriis quibuscumq; & omnimodis aliis
 Articulis qui possint cadere in finem vel re-
 demptionem seu in aliam penam Pecuniari-
 am ac de aliis contractibus placitis querelis
 psonalibus & alijs causis & materijs quibul-
 cunq; quocumq; nomine censerentur seu cense-
 ri possint licet tangerent dictū nuper Regem
 Heredes vel Successores suos (assilis & pla-
 citis de libero tenemento duntaxat exceptis)
 infra villam Oxonie Suburbias Hundred
 aut Comitatus Oxon pdiar aut alibi infra
 Regnum Angl qualitercunq; emergent factis
 sive ppetrat aut faciend sive ppetrand tam
 ad sectam dicti nuper Regis Hered & Succes-
 sorū suorum quam ad sectam patris vel alio quo-
 cunq; modo ubi Scholares aut eorum Servi-
 entes sive ministri aut alie aliquę psonę que
 aliquo privileg dicte Universitatis gaudere
 deberent vel debet quos vel quem dicte Can-
 cellar Commissoꝝ ejusve locum tenens seu
 eorum Successores calumpniare vellent fuit
 vel foret un' partium p Scholaris seu eorum
 Servientes aut Laicos Bentes eidem Vi le
 Oxon aut p al inquirerent vel inquirere
 possint & plenam cognitionem & correctionē
 inde haberent & hujusmodi plita querelas
 causas & materias quocumque loco infra
 Villam Oxon & Suburbias ejusdem aut
 pince Universitatis pdiar eis placeret & ex-
 ecutionibus inde secundum eorum Statuta &
 Consuetudines vel secundum Regem Reg
 Anglie ad voluntatē pdicte Cancellarii Com-
 missarii sive ejus Deputat & Successorū
 suorum fac ac omnes & singulos Articulos
 causas materias & querelas (exceptis pre-
 exceptis) audirent & terminarent ac omnia
 ac omnimoda Amerciamenta exitus foris fa-
 cturas & pficia inde pvenientia consodū &
 utili-

utilitatem Universitatis p̄dicte herent leba-
rent & perciperent p̄ se & Deputatos suos
imppetund. Ita quod nullus Justiciarius
ad p̄lita coram dicto nup̄ Rege seu Heredibus
suis tenend assignari vel Assignand Justiciari
de Comuni Banco Justiciarii ad Am̄as
capiend vel ad Gaslas deliberand vel custo-
des Pacis seu Justit̄e serviend laboratorid &
artificid seu al Justit̄e vel Judices cuicunq;
Seneschal vel Marechal vel Cleric Mercati
Hospitij dicti nup̄ Regis Henrici octavi vel
Heredid suoz. Vicecomes Major Ballivus
seu alius Officiarius vel Minister dicti nup̄
Regis vel Heredum suoz quicunq; se hujus-
modi p̄litis querelis contractibus Articulis
Causis Materiis vel al rebus p̄dicte seu eoz
aliquo (exceptis p̄ceptis) infra dictam Wil-
lam Oxon Suburb seu P̄ecince ejusdem vel
alibi infra Regnū Angl face vel faciend in
p̄sentia nec in absentia dicti nup̄ Regis vel
Heredid suoz in aliquo intromitteret. Et
si iidem Justit̄e aut al Ministeri dicti nup̄
Regis seu eoz aliquis in p̄sentia seu absen-
tia dicti nup̄ Regis vel Heredid suoz sup
aliquibus p̄missis (exceptis p̄ceptis) in-
quirere seu aliquale cognoscere vel intro-
mittere p̄sumerent in tunc futurum iidem
Ministeri & Officiarij p̄dicte ad certificatio-
nem notificationem seu significationem Can-
cellarii Universitatis p̄dicte qui p̄o tempore
foret aut ejus Commissarii sive locum tenen-
tis inquisitionibus & cognitionibus hujus-
modi aut cuicunq; p̄cessui & executioni inde
qualitercunq; faciend omnino supsederent &
se inde ulterius in aliqua nullatenus intro-
mitterent nec partem ad respondend inde co-
ram ipsis ponerent ad quod pars illa coram
dicto Cancellario & Successoribus suis eoz.

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 solimodo castigare punire in forma p̄dice
 put p̄ eadem Literas Patentes hic in Curia
 plac̄ plenius apparet. Et idem Vicerancel-
 larius ulterius dicit quod per quendam A-
 ctum in Parlamento Dom̄ Elizabethe
 nuper Regine Angl̄ apud Westm̄ p̄dice in
 Com̄ Midd̄ secundo die April̄ Anno Regni
 sui decimo tertio inchoat̄ & tenet̄ & edic̄ (inter
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 Parliamene quod p̄dice Litere Patentes
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 concess̄ Cancellar̄ & Scholaribus dicte Uni-
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 April̄ Anno Regni ejusdem nup̄ Regis deci-
 mo quarto supradicto ac etiam omnes al̄ Li-
 tere Patentes p̄ aliquem Progenitor̄ seu
 Predecessor̄ dicte Dom̄ Regine Corpor̄ Cor-
 porae Universitatis Oxon̄ sive aliquibus
 Predecessor̄ seu eor̄ dicte Universitatis
 quocunque nomine sive nominibus Cancell̄
 Magistri & Scholares ejusdem Universita-
 tis in aliquibus dictar̄ Literar̄ Patentiū
 fuissent ante tunc nominat̄ extunc de cetero
 forent bone effectuales & valide in Rege ad
 omnia Intentiones Conseruationes & propo-
 sita tunc Cancell̄ Magris & Scholaribus
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 plen̄ & large ac si eadem Litere Patentes
 recitat̄ fuissent verbatim in illo tunc p̄senti
 Actu Parliamenti aliquo in contrariū ullo
 modo non obstante. Et ulterius inactitat̄
 fuit Authozitate p̄dice quod dicte Litere Pa-
 tentes dicti patris ejusdem Regie celsitudi-
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nis Henrici octavi gerentes datum sicut p̄-
 pressū est facere & concessū dicto corpori Politi-
 co dicte Universitatis Oxon̄ ac omnes al
 Litere Patentes p̄ aliquem Progenitorū seu
 Predecessorum Regie Celsitudinis ac omni-
 modū Libertatē franchisie immunitatē quietan-
 cie & Privilegia Acte dies (Angl̄ Law-days)
 & al̄ res quecumq; in eisdem expressē dāc sive
 concessē dicte Cancellari Magistris & Scholar̄
 ejusdem Universitatis aut aliquibus dictarū
 Literarū Patentiū fuer̄ nominatē & virtute
 illius tunc p̄sentis Actus forent extunc de ce-
 tero ratificatē stabilie & confirmatē p̄dicte
 Cancellari Magistris & Scholarib; Univer-
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 p̄ & subter eandem notificationem & p̄ eadē
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 Subject & Liabilis summon & implicitat
 & indictat coram dicto Cancellario Commis-
 sario sive locum tenenti Universitatis p̄dicte
 & non alibi nec in alia curia quacunque Et
 idem Vice-Cancellarius ulterius dicit Quod
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 sarius sive Locum tenent Universitatis p̄dicte
 p̄ tempore existē a tempore consecrationis Li-
 terarū Patentium p̄dictarū hucusq; ha-
 buerunt cognitionem & determinationem
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omniū plitorū p̄dicte (exceptis p̄ceptis)
 aliquo modo tanged vel concerned Magi-
 stros Scholares sive Ministros vel Servi-
 entēs aliquorū Magistrorū vel Scholarium
 Universitatē p̄dicte unde idem Vice-Cancella-
 rius petit Libertatem suam p̄dictam in isto
 plito in Curia Dom̄ Regis nunc inter par-
 tes p̄dictas & eadem virtute Literarum Pa-
 tentium p̄dictarum ac vigore Statuti p̄dicti
 sibi allocari, &c.

Note, If a Man brings Action of Debt by Bill in
London, Norwich, or any other Inferior Court, and
 afterwards brings Writ of Debt in *B. C.* this Suit
 in the higher Court which is purchased, pen-
 ding Suit by Bill in Inferior Court shall not abate.
7 Rep. 62. a.

C A P. IV.

Actions brought in Inferior Corporations, and of Jurisdiction, Declarations and Pleadings.

Vide infra Custom of London as to Actions, Et *vide infra* Error.

Trespass and Trover, the Difference. Riens per Discent pleaded by the Heir, Plaintiff replies Asssets, but shews not any Place where. Dies Juridici and Adjournment. Suit in Inferior Court, and then a Bill in B. R. it shall not abate. No Assignment of Error against a Record. Of Proceedings after Habeas Corpus delivered. Mayor and Bayliffs Judges of the Courts, yet by Custom the Bayliffs may be Officers. Bayliff takes the Bayl in Execution, and no Capias against the Principal. Informations not to be exhibited in Inferior Courts. The Jurisdiction of an Inferior Court ought to be shewed, and in what cases it ought to be shewed, and in what not. Where it must be shewed by what Authority the Court is held, by Patent or Prescription. Where the Letters Patents need to be set forth or not. Six Material Exceptions to a Justification in Trespass. Traverse upon a Traverse where it may be used. Land lies in the Suburbs, and a Venire from the Parish in a City. In Declaration of the Place to which, &c. appears to be in another County, the Jury cannot try it. Where the Court cannot try Assumpsit because they cannot enquire of the Performance of the Consideration. Construction of Ad tunc & ibidem. The Difference between the Inferior Courts and Superior Courts, as to Jurisdiction and Tryal. Indebitat' Assumpsit for Wares sold and delivered, not saying where.

Disconti-

Discontinuance of Plea for default. In what Cases the Jury may assess Damages in a Foreign Jurisdiction. Regula about Jurisdiction as to Pleading. Of transitory Actions tryed in Inferior Courts. Discontinuance where one is bound proferre Literas Patentes or not. Where in Certificate on Error Jurisdiction must be set forth, and where it need not. Enquiry of Damages before whom. What Witnesses for a Corporation in a Tryal shall be allowed or not. The Performance of the Promise must as well be within the Jurisdiction, as the Promise it self. Attachia-tus for Summonitus not aided. Dicit omitted in the Declaration.

Jurisdiction.

Error was brought to Reverse a Judgment in *Trespass Vi & Armis* at *Doncaster*: The Error assigned was, That the Plaintiff declared that the Defendant took certain Cows of his out of the Jurisdiction of the Court, and brought them within the Jurisdiction, and there converted them to his own use. And it was adjudged to be Error, in regard that the taking of the Cattel, which is the Ground of the Action, was without the Jurisdiction of the Court; but had it been an Action of *Trover* and *Conversion* it had been good. *Stiles* 313. *Keighly and Roades*.

Trespass, Trover, the difference.

Plaintiff replies Affets, but saith not where, but ought, though the Action is laid in a Corporation.

Error of a Judgment in *Derby* in Debt against the Heir upon an Obligation by his Father. The Defendant pleads *Riens per Descent*; the Plaintiff replies Affets, but doth not shew any Place, and found *pro Quer*. The Error assigned was because he did not shew in his Replication any Place where the Affets should be; and so there is no place from whence the *Venus* should come. And though it were alledged that this being in a Corporate Village, which hath not Jurisdiction to try any Matter out of it; (and therefore may well be intended to be in *Derby* where

where the Action was brought) yet all the Court held it to be Error, and it's all one whether the Action be brought in a Corporation or any other Court. And the Judgment was reversed. *Cro. Jac.* 504. *Bourne and Carrington. Vid. 6 Rep.* 46. *Dowdal's Case.* But in such Case the Jury may find Affets in any Place.

Error of a Judgment in *Worcester*; the Error assigned was, That a Day was given to the Parties till the Court to be held on 25 Dec. which was *Christmas-day*, and it was then adjourned till 1 Jan. which Days are not *Dies Juridici*; and therefore the adjournment to these Days was void. But *per Cur.* though these Days be not properly *Dies Juridici*, yet when a Court is holden by Custom every Monday, which falls out to be *Christmas-day*, they may make Adjournment to a Day more convenient, and it's not erroneous. And the Judgment was affirmed.

Adjournment
of Court.

Error of a Judgment in Action on the Case in *Abingdon-Court*: The Error assigned was for that the said Court is mentioned to be held there before the Mayor *secundum Consuetudinem Burgi a tempore cujus contrarii memoria, &c.* and it doth not appear that there was any such Custom there to hold Pleas. Upon this Error assigned it was demurred in Law; for it is against the Record to assign such Matter for Error, it being pleaded there and Judgment given against him. And if it be true that there is no such Custom, then the Proceedings are *coram non iudice*, and he is not grieved thereby, but he may have *faux Imprisonment* if he be arrested by virtue of such Judgment, or other Action, if his Goods be impeached thereby. *Per Cur.* this Assignment being against the Record, is not reversible; and Judgment was affirmed. *Cro. Jac.* 359. *Whistler and Lee.*

No Assignment
of Error against
a Record.

Proceeding after an *Habeas Corpus* delivered.

Error of a Judgment in *D.* the Error assigned was because after an *Habeas Corpus cum causa* was sued out of this Court, and delivered to the Mayor and principal Officer of that Court, and acceptance and allowance thereof, they notwithstanding proceeded to Tryal and Judgment. Defendant pleaded in *nullo est erratum*. *Per Cur.* the Proceeding after the *Habeas Corpus* delivered is an Error, & *coram non iudice*, which is confessed by the Pleading in *nullo est erratum*; and if it was not true that it was delivered to the Mayor and allowed, it ought to have been denied, and is tryable *per pais*. Judgment was reversed. *Cr. Car.* 261. *Ellis and Johnson*.

Mayor and Bayliffs Judges of the Court, yet by Custom the Bayliffs may be Officers.

Error of a Judgment in *Northampton*, because there the Court being held before the Mayor and two Bayliffs, the *Venire Facias* upon the Issue was awarded to the two Bayliffs to return a Jury before the Mayor and Bayliffs *secundum consuetudinem*, which being returned and Judgment given, the Error assigned was, because the Bayliffs being Judges of the Court could not also be Officers to whom Process should be directed. *Per Cur.* it may be good by Custom, and it is not any Error. For the Judges be not the Bayliffs only, but the Mayor and Bayliffs; and it is a common course in many ancient Corporations so to be: The Mayor and Bayliffs be Judges, and the Bayliffs in respect of executing Process are Officers also. *Cr. Car.* 138. *Crow and Holland*.

A. brings an Action against *B.* in inferior Court of Record, wherein *C.* is Bail for *B.* and binds his Lands and Goods by Recognizance, that *B.* shall render his Body to prison if he be condemned, or that he will pay the Money recovered, and after Judgment is given against *B.* and a Precept is directed to the Bayliff of the Court, in nature of a *Cap. ad satisfaciend.* to take *B.* if he be found,
and

and in default of him to take C. and the Bayliff returns because B. was not found, he took C. in Execution, although by this Recognizance C. doth not bind his Person, so that the *Capias* lies not against him; and tho the *Capias* doth not lie at the same time against the principal, and then a *Scire Facias* against the Bail, yet because the Court had Jurisdiction of the Cause, and he did this by force of the Precept of the Court, it shall excuse him. 2 *Rols Abridg.* 560. *Seaborn* and *Saruaker.* *Vid. plus Infra.* Tit. Error.

Bayliffs take the Bail in Execution, and no *Capias* against the principal.

B. brought a Plaint in the Court of *Ludlow* (which is a Court of Record) against C. *tam pro Dom. Regina quam pro seipso.* Upon the Statute 5 P. & M. c. 5. which prohibits the weaving of woollen Cloth or Kersies, unless he had been Apprentice or exercised the Trade for seven Years, upon the pain of forfeiture of such Cloth, or the Value of it, the penalty to be recovered by Action, Bill, Plaint or Information in any Court of Record, &c. 3 Errors assigned. 1. That the said branch of the said Act was abrogated and taken away by the Statute, 5 *El. c. 4. sed non alloc.* for both may stand well together. 2. That the Plaintiff by Statute 18 *Eliz. c. 5.* ought to have sued by Original or Information; and so it was adjudged, *Hill* 30. *Eliz.* in *B.R.* between *Woodson* and *Clark*, where the Defendant was sued by Bill upon the Statute 23 *H. 6.* of Sheriffs, and adjudged it lies not. 3. Though *Ludlow* be a Court of Record, yet it is not such a Court as is intended by the Statute. 1. Because the Court intended by the Statute are the four Courts of Record at *Westminster*, which are generally Courts of Record, and so in general parlance it shall be so intended. 2. If the Act should be taken according to the Letter (in any Court of Record) then a Court of Oyer and Terminer, Sewers, Goal delivery, Sheriffs Turn, Pie-

Informations not to be exhibited in inferior Courts.

Pie-powder, Leet, should be within the Act; and the rule is *verba aequivoca & in dubio posita intelliguntur in digniori & potentiori sensu*. 3. Tho the Informer, *tam pro Dom. Regina quam pro seipso*, exhibits the Information, yet if the Defendant plead a special Plea the King's Attorney shall reply only, and it was the intent of the makers of the Act, that the Suit shall be in such Court where the Kings Attorney may attend; and this is in the four Courts at *Westminster*; for the two last Errors Judgment was reversed. 6 Rep. 14. 20 *Gregory's Case*.

Jurisdiction of inferior Corporations and Franchises, and Declarations and Pleadings.

The Jurisdiction of an inferior Court ought to be shewed.

IN Trespals for taking away a Mare, the Defendant saith, That before the taking the Defendant (being the Kings Bayliff) by Precept out of the Court of *Pomfract* to make Execution by *L. on Levary*, &c. *Per Cur.* its ill, because he doth not shew the Jurisdiction of the Court, and that is necessary by the Bayliff of an inferior Court, especially because he justifies by reason thereof. 1 *Keb.* 53. *Crofts and Wilkinsons Case*.

In what cases the Jurisdiction of the Court ought to be set forth, and in what not.

As to the manner of declaring on Escapes in inferior Courts, or upon removal out of inferiour Courts, it need not be shewed how the Jurisdiction of the inferior Court was, and how it was held, this being but inducement to the Action, as is 1 *Cro. May and Hodges.* 2 *Keb.* 219. *Drinkwater's Case*. The Escape being the material part, and tho it is said the Party was committed *debito modo*, and doth not say *prout patet per recordum*, its good enough, the Presidents being both ways. But in *Hodges's Case* the difference is right, when the Jurisdiction of the Court ought to be set forth, and when not. The Decla-

Declaration was, Whereas the Plaintiff in such a Court of Pie-powder, held at *Gloucester secundum consuetud. Civitatis illius*, brought Debt of 200 l. against *Hodges*, and thereupon he was arrested, and under Custody of the Sheriffs of *Gloucester*, who let him go at large. *Per Cur.* In pleading a Recovery in inferior Courts he ought to shew by what Authority the Court is holden, whether by Patent or Prescription. Afterwards when they make any Certificate out of inferior Courts, ought to shew therein how the said Courts are holden; for they best know their own Authority, otherwise in the case of a Stranger, as here, where the stile of the Court is but an inducement to the Action, *Cr. Car.* 58. *Hodges and May.*

Where it may be shewed, by what Authority the Court is held, by Patent or Prescription.

Process out of a Court, *virtute Literarum patentium*, is good in Justification; but in a *Quo Warranto*, or any Action for the Court, they must be set forth, and in an Action between Parties, where there is no Question of the Jurisdiction, they need not set forth. 2 *Kel.* 104, 156. but it must be specially pleaded that such a Court was granted, and that *virtute ejus*, &c.

Where the Letters Patents need to be set forth or not.

Issue in Replevin joined and found, *pro Quer.* in the Court at *Windsor*, being a three Weeks Court. Defendant assigned for Error, that the Entry of the Plaintiff in the said Court was the 7th day of May, and the Plaintiff did afterwards declare there of a taking of the Cattel the 25th day of May. *Per Cur.* it's Error, because no Plaintiff can be entred but at a Court, and this Entry of the Plaintiff was Mesne betwixt the Court days, and so the Declaration is not warranted, no Custom being alledged to maintain such Entry. *God.* 266. *Roll's Rep.* 338. *Brook and Gregory.*

Mis-entry of the Plaintiff.

Trespass for breaking an House, and taking a Cup, the Defendant justifies by Plaintiff and Judgment in *Wakefield*; and a Precept of Execution, to which the

6 material Exceptions to justification in Tresp's.

E

Plaintiff

Plaintiff demurred, because 1. It said *quædam curia*, not saying what. 2. It is *taliter processum*, till Judgment. 3. It's said a Court, *coram Senescallo & Sectatoribus*, which cannot be a Court-Baron. 4. It is said the Defendant, *ut Ballivus Senescall'*, took. 5. The Precept is returnable, *ad prox' Session.* and the Return is half a Year after. 6. The execution is at such a place, *in paroch. præd.* and saith not *infra Jurisdiction.* *Per Cur.* all the exceptions are material. 2 *Keb.* 4. 844. *Gamble and Forrest.*

Trespass for Battery and Imprisonment at C. in *Devon.* Defendant pleading he was Steward of the Court of *Stannaries* held at A. in *Devon.* where because the Plaintiff would not put in Pledges to a certain Action brought by J. S. he gave Judgment, and commanded the Officer to take him till he paid 20 *l.* *absque hoc*, that he is guilty of the imprisonment in any place out of the Jurisdiction of the *Stannaries.* Upon Demurrer, *per Cur.* the Plea is ill, for that it doth not appear by this Plea whether C. be within the Jurisdiction of the *Stannaries* or not; and if it be within the *Stannaries*, then the Plea is not good, because it is no answer to it. 1 *Rol. Rep.* 267. *Evely and Holey.*

Trespass of Assault and false Imprisonment, supposed to be done in such a Parish and Ward in *London*, 20 *Maii*, 35 *Eliz.* Defendant justifies by reason of an Execution upon a Recovery in the Court of *Sandwich* within the Cinque Ports, in Debt and Traverse *absq; hoc*, that he was guilty in *London*, &c. The Plaintiff replies, and maintains the Assault and Imprisonment, and traverseth, *absq; hoc quod habetis aliquod tale recordum loquel. prout* the Defendant hath alledged, *Et hoc paratus est verificare per Recordum.* Defendant demurs. *Per Cur.* the Defendants Plea, *prima facie* was good, because it was a special matter of Justification, which cannot be pleaded and alledged to be in any other place

place than where it was done; but in this case, if the special matter alledged in the forein County be false, as here, the Plaintiff may maintain his Action, and traverse the special matter alledged by the Defendant; and so in such a case a traverse may be upon a traverse, when falsity is used to oust the Plaintiff of that benefit which the Law gives him. *Pop. 101. Paramour and Verrult. Cr. Eliz. fo. 18.*

Traverse upon a Traverse.

Error was brought to reverse a Judgment given in the *Kings-Bench* in Ireland, in Debt for Rent. The Plaintiff declared of a Lease of Land in such a Parish in the Suburbs of *Dublin*, on *nihil debet*, the *Venire Facias* was from the said Parish in *Civitate Dublin*, and Judgment there *pro Quer.* It was assigned for Error, because the Land lies in the Suburbs of the City, and the *Venire Facias* was from a Parish in the City. *Per Cur.* It is all one, for the Suburbs are always within the Franchise of the City, as *Fleetstreet* within the Suburbs of *London*. *Holmes and Sanders. H. 22 & 23. Car. B. R.*

Land lies in the Suburbs, and the *Venire* from a Parish in the City.

Action on the case was brought in *Windsor* Court, upon a promise. Plaintiff declares, that at *Windsor* within the Jurisdiction of the Court, in consideration the Plaintiff assumed to draw with four Horses 1500 Tyles from an House in *Hedly* in *Com. Bucks*, to the top of *Hedly Hill*, *Ibid.* the Defendant promised to pay 5 *l.* Tho the Defendant pleads *non assumpsit*, yet the Court cannot proceed to try it upon this Declaration, because it appears in the Declaration that *Hedly-Hill*, the House to which, &c. are in the County whereof this Jury cannot take conusance. *1 Rols Abridg. 545. Iverstone.*

If in the Declaration the Place appears to be in another County, the Jury cannot try it.

Action was brought in the Court of *Bath* in the County of *Somerset*, for scandalous words against a Taylor, and declared that he used to work for divers Persons inhabiting within the City aforesaid, as well as within the Kingdom of *England*; *Thou hast stolen as much Closh out of my Suit as will*

Words.

Jurisdiction.

make thy Wife a Waistcoat ; by which he lost his said Customers. The Defendant pleaded not guilty, yet the Court cannot try it upon this Declaration ; for the Jury upon the Trial ought to give Damages for the loss of Customers out of the Jurisdiction of the Court. *Stowell and Ireland. 1 Rol. Abridg. 546.*

Oxford

Courts cannot try *assumpsit*, because they cannot enquire of the performance of the Consideration.

Action on the Case was brought in the Mayors Court in *Oxford*. Plaintiff declares, that in consideration the Plaintiff would buy or procure to be bought Wines in *London*, and convey them to *Oxon.* to the Defendant, to be paid by him, the Defendant assumes at *Oxford* to pay to the Plaintiff the Money expended by him for the Wines and Carriage, and the Moyety of the clear Profit coming by the Sale. Defendant pleads *non assumpsit*. The Court of *Oxon.* cannot try it, because they cannot enquire of the performance of the consideration for Damages which are performed out of the Jurisdiction, *viz.* the buying of Wines in *London*, and bringing them to *Oxford* from *London*, adjudged in a Writ of Error upon the Judgment in *Oxon.* after Verdict *pro Quer.* and the Judgment reversed.

Ad tunc & ib.

In Action on the case in *Redding* Court, the Plaintiff declared, in consideration that the Plaintiff would carry certain Meal from *Redding* to *London*, the Defendant, *ad tunc & ibid.* assumed to pay so much as he deserved. Upon this Declaration it shall be taken that the Promise was made at *London*, which is the next Antecedent, and so out of the Jurisdiction of the Court of *Redding.* 2 *Rols Abridg. 252. Long and Atkins.*

Assumpsit.

Action *sur Case* in inferior Court, if the Plaintiff declare that at a place within the Jurisdiction of the Court, the Defendant assumes, that in consideration that such a Ship shall go from *Yarmouth*, which was out of the Jurisdiction, to *Amsterdam*, he would give to the Plaintiff 5 *l.* and avers that
the

the Ship went from *Yarmouth* to *Amsterdam*, and upon this the Defendant pleads *non Cul.* This is not tryable in this inferior Court, because they cannot enquire of those things which are out of their Jurisdiction; tho the Agreement was made within the Jurisdiction, *P.15. Car.1. B.R. Bryan and Langborne.* This was Writ of Error upon such Judgment in *Newcastle.*

The Courts superior, as Kings Bench, and the Court of Common Pleas, the Jury in these Courts in matters transitory, may find the thing in any place in *England*, altho it doth not appear that the place is within their Jurisdiction; but if those of an inferior Court will try a thing, it ought to appear that this thing is within their Jurisdiction. *Sid.65. Romsey and Atkinson.*

Error to reverse a Judgment in the Pallace Court for calling the Plaintiff Whore, by which she lost her Marriage, but saith not where. *Per Cur.* it's Error. For here the first words are not actionable without special damage; *aliter*, where the words are actionable in themselves. *Sid. p.45. Littlebury and Wright.*

The Mayor and Commonalty of *Exeter* brought Debt against S. for 60 *l.* by them imposed upon him for refusing to take the Oath and make the Declaration required in the Statute of 13 *Car.2.* for the better Government of Corporations, and declare that he was elected Bailiff of the Corporation for one year according to their Charter, in which is a power to Freemen for refusal to accept of the Office, and that by his refusal the Election became void, and aver, that the Bailiff usually expends 60 *l.* in his Office; and for his refusal he was fined 60 *l.* for which the Action is brought, and on *nil debet* Verdict and Judgment in *B.R.* and Error brought in *Scac.* and assigned that the Stat. 13 *Car. 2.* does not enable to impose any Fine, but only makes the Office void. But *per Cur.* the refusal of the Oath

Debt and Fine
for refusing to
take the Oath,
Et. 13 Car.2.

is by a means a refusal of the Office, and so within their power given by their Charter to fine for refusal to accept of the Office, and the Judgment was affirmed. 3 *Lev.* 116. *Star* against the Mayor and Commonalty of *Exeter*.

Demurs generally because Defendant shews not by what Authority the Court was held.

Debt on obligation *vers. Execut.* who pleads that in *Cur. Dom. Regis de record* tent. 4 die Novemb. Anno Regni Dom. Regis nunc 34 apud Guildball, Civitat. Norwich coram A. & B. Vicecomitibus ejusdem civitatis, L. brings Debt upon Bond against him for 600 l. and Recovers, and Pleads, *plene admittit* &c. Plaintiff demurs generally, and Judgment for him, because the Defendant doth not shew by what Authority the Court was held, by Prescription, Grant, or otherwise, according to the Resolution in *Turner's Case*, 8 *Rep.* 3 *Levin.* 141. *Jones and Moldric.*

Holding Plea of matter *extra Jurisdictionem*.

Assumpsit in *London*, for depasturing an Horse at Pasture in the County of *Essex*; the Defendant pleads in Bar a former Action brought in the Sheriffs Court in *London* for the same depasturing, and Judgment there for the Defendant; the Plaintiff replies, That the cause of Action arose in *Essex*, out of the Jurisdiction of the Sheriffs Court, upon which the Defendant demurs generally. *Per Cur.* the Plea in Bar is naught; for if the Sheriffs Court there holds Plea of matter, *extra Jurisdictionem*, their Judgment is void, and cannot be executed. 3 *Lev.* 234. *Micoe and Morris.*

Judgment upon Attachment in *London* on Bond made *extra Jurisdictionem*, voidable by Plea.

In *Assumpsit* Defendant pleads two several Attachments of Money in *London*, viz. one for part of Money due to himself upon Obligation, and for the residue upon an Obligation to a Stranger. Plaintiff replies, That the two several Obligations upon which the Attachments were made, were *extra Jurisdictionem curie de London*. Defendant rejoyns that the Obligation to himself made was made *infra Jurisdictionem cur. de Lond.* Plaintiff demurs, and Judgment

ment, *pro Quer.* for Judgment of a thing out of their Jurisdiction is absolutely void, and advantage of this is to be taken in pleading, without reversal by Writ of Error, 1 *Roll.* 809. and here the Rejoynder does but answer to part of the Replication, therefore the Plaintiff ought to have Judgment for all. 3 *Lev.* 23. *Frampton and Pettis.*

Mayor and Commonalty of London declare of Custom of London for Whey-
a Custom that they and their Predecessors, Mayors, age of Goods
&c. have had of every Master of a Ship 8 *d.* per brought into
Tun for every Tun of Cheese brought from any the Port with-
place in England to the Port of London, *ab orient* out considera-
tie de London-bridge, in name of Wheyage, and that tion.
the Defendant being Master of a Ship, had brought
to the Port of London so many Tuns, which at that
rate amounts to so much, and had not paid it; and
upon *non assumpsit*, Verdict and Judgment, *pro*
Quer. a Writ of Error was brought by the Defen-
dant. 1. That the Action does not lie against the
Master, but the Duty is due by the Merchants,
Owners of the Goods, *sed non alloc.* for the Master
is trusted with the Goods, and hath recompence of
the Merchants for carrying the Goods; and it would
be endless to search after the Owners of the several
Goods. 2. Here is not any consideration for the Duty.
But *per Cur.* having liberty to bring them to the
Port, which is a place of Safety, is good considera-
tion, and the Mayor and Commonalty of London
have the view and correction of the River of
Thames, by the Statute of 4 *Edw.* 4. 3 *Lev.* 37.
Mayor and Commonalty of London, *vers.* *Hunt*
in *Camera Scaccarii.*

Error of a Judgment in Inferior Court in *Assum-* *Indeb' assumpsit*
psit for Wares sold, because he saith *indebitat. infra* the Wares, and
Jurisdictionem for the Wares, and saith not they saith not sold
were sold *infra Jusdict.* and by the Multitude of *infra Juris-*
Presidents that had been so, Judgment was reversed; *dictionem.*
but otherwise *Hale* and *Wild* held it well enough.

2 *Levins* 87. *Hanslip and Coater*, p. 25 *Car.* 2. B. R.

Roman Figures in Pleading in Inferior Courts good.

Error of Judgment in *Exeter* Court, for that in the Award of the *Venire Fac.* it was *præcept. est per Curiam quod Venire Fac.* XII. in Figures, but being Roman Figures *per Cur.* it is good enough; otherwise had it been thus 12, in English Figures: And the Judgment was affirmed. 2 *Levins* 102. *Hawkins and Mills.*

Plea of Frank-Tenant not without Writ.

Error of a Judgment in Dower in the Court of *Newcastle upon Tyne*, for that it was a Pleint without a Writ, for Pleas of Freehold may not be held without Original Writ, 3 *Cro.* 101. and yet their Custom is alledged to hold them without Original, which is not laid so here. *Hale dubitavit* if a Custom had been alledged; for in *London* they hold Assizes of fresh Force *per Custom* without Original. But their Customs are confirmed by the Stat. R. 2. And he said Assizes of fresh Force are held in other places by Custom. But Judgment was reversed. 2 *Levins* 123. *Lomax and Armorer.*

Consideration.

In *Assumpsit* in Inferior Court the Consideration was, that the Plaintiff should solicit a Cause in *Chancery*, the Court reverse the Judgment there for want of Jurisdiction. 2 *Ventr.* 28. *Barkley and Pain.*

Assumpsit in *Hull.*

Assumpsit in *Hull*, the Plaintiff declared that there being a Communication between the Plaintiff and Defendant concerning an House which was said to be at *Hull*-Bridge, which the Plaintiff sold to him; the Money being unpaid, and the Defendant unable, in consideration the Plaintiff would release to him the said Debt, he promised to deliver up the Possession of the said House by a day certain. Then he avers, that though he released him, that the Defendant had not delivered him up the Possession *licet scilicet requisitus*. It was held to be Error, because the House is not said to be within the Jurisdiction; for

for the Performance of the Promise must as well be within the Jurisdiction as the Promise it self; but it is not material, though there be other foreign Circumstances in the case, as *assumpsit* upon a Promise to re-deliver an Horse at *Hull* to ride to *Beverley*; this that Court had Conusance of, though *Beverley* was out of the Jurisdiction. *2 Vent. 72. Barnard vers. Barnard. Sid. 151. Drake and Beere.*

The Performance of the Promise must as well be within the Jurisdiction as the Promise it self.

Error of a Judgment in *Norwich*, because in Action of Debt the Record was *Attachiatus est*, where it ought to have been *Summonitus est*; for that ought to be as an Original, and for want thereof it is Error; and it is not aided by *Stat. 18 El.* for that is intended want of Original Writs sued out of Chancery, returnable into the *B. C.* or *B. R.* but it extends not to Processes, which is in the Nature of an Original Writ. *Cro. Jac. 108. Prat and Dixon.*

Attachiatus for *Summonitus.*

Not aided by *Stat. 18 Eliz.*

Error of a Judgment given in *Havering Bower*, for that in a Replevin there the Declaration supposeth the taking to be *apud Chelridge* in a place called *C.* and he doth not say *Infra Jurisdictionem Curie*, for it being a private Jurisdiction, it ought to be specially shewed to be within it; otherwise the Court shall not intend it, though *Havering Bower* was in the Margin, and that shall not be sufficient to take away the Jurisdiction of the Superior Courts without shewing it. *Alit.* where the County is in the Margin of a Declaration, and the Trespass or Thing is alledged to be done *apud D.* and doth not shew in what County *D.* is, yet it is well enough, for it shall be so intended. *Cro. Jac. 91. Quarles and Searle.*

Where ought to shew *Infra Jurisdictionem.*

Debt on Bond in *Southampton*; Error assigned was, That at a Court held 9 Nov. the Defendant brought his Writ of Priviledge, and the Mayor being absent the Bayliffs allowed it, and gave day till the next Court, when the Mayor being present did disallow

disallow it, and for default of answer *Nil dicit* was enter'd, which is a plain Error ; for after the Writ delivered they could not proceed : and if it be said that the Bayliffs are not Judges, then they cannot hold a Court, and the Day given by them is null. *Cro. Eliz. 152. Bettrice's Case.*

In Error upon a Judgment in the Court of *Conventry* the Plaintiff declared, That the Defendant being indebted to him *infra Jurisdictionem Cur. pro diversis bonis & mercimoniis ante tunc vendit. & deliberat.* did then and there assume a Judgment *pro Quer.* but *per Cur.* it is Error that the Goods were not alledged to be sold within the Jurisdiction of the Court. 2 *Ventr. 243. Hanslap and Cater, 1 Keb. 499.* But it is said in Action on *Indebitatus infra infer. Jurisdic.* for Wares sold and delivered, not saying where, after Judgment by *Non sum informatus*, it was assigned for Error, that the Sale was not said *infra Jurisdictionem, sed non allocatur per Curiam*, the *Indebitatus* being created by Law. 2. It is said that the Defendant *per Attorn. venit & dicit quod non est informatus*, which *per Cur.* is Error. 3. Judgment *quod recuperet* for *recuperare debeat*, being Executory in Error. 1 *Keb. 419. Anison versus Starke.* And yet in *Dorrington* against *Slipper's Case*, Error of a Judgment in the Palace-Court in *Indebitatus infra* for Wares sold and delivered, not saying where, It is Error *per Cur.* the Debt arising on the Delivery, which must shew the place certain, 1 *Keb. 513.*

Error of a Judgment in *Salop*; for that in Action upon the Case there tryed, the Defendant was essoined and had day *per Essoin. & Quer. habuit eandem diem*, at which day the Defendant being demanded, appeared not, but made default; *Et habuit diem per default. secundum Consuetudinem Villæ prædictæ.* given by the Court, (*viz.*) such a day at which day the Parties appeared, and Judgment

The Goods to be alledged to be sold *Infra Jurisdictionem.*

Indebitus assign'd for Wares &c. and saith not where.

ment was given against the Defendant *per nihil dicit*. So the Plea was utterly discontinued; because when the Defendant made default no day can be given to him, when he was out of Court, and the Allegation that it was done *secundum Consuetudinem* cannot help it; for no Custom can help that which is against Common-Law. *Cro. Jac.* 357. Discontinuance of Plea.

Error of a Judgment in *Havering-Court* in *Essex*, because the Judgment being in Debt by *Nihil dicit*, there was a Discontinuance (*viz.*) that after Im- Discontinuance.parlance, day was given to the Parties until the next Court, and no day certain: And for this cause Judgment was reversed. *Cro. Jac.* 571. *Adams and Flyth.*

Error of a Judgment in *Bath* in Action on the Case for Words; Whereas the Plaintiff was a Taylor in *Bath*, and was a Freeman there in *Com. Wilts*; That the Defendant said of him at *Bath*, That *he Cheated in his Trade*; by which means he lost divers of his Customers in *Bath* and in the County of *Wilts*. Judgment *pro Quer.* 100 Marks Damages. Error was, That the Jury at *Bath* (being within a private Jurisdiction) ought not to have assessed Damages for the Loss of his Customers in the County of *Wilts*. And it was agreed that the Case in *Windfor-Court* about the Carriage of the Load of Billets was good Law: But this being an Allegation only in respect of Damages for the increase of them, which they may enquire of in any place whatsoever, Judgment was affirmed. *Cro. Car.* 570. *Ireland and Lockwell.* In what case Jury may assess Damages in a foreign Jurisdiction.

In Debt for Rent it is Error if the thing demised doth not appear to be within the Jurisdiction of the Inferior Court where the Action is brought. *Sid.* 151. *Drake and Beere.*

Action of Debt was brought for Rent at *Exon*: Error was assigned, That though the Lease was made at *Exon*, yet the Land demised was supposed to

Whatever things may be traversed in Inferior Courts shall not be supposed to be within the Jurisdiction.

to be out of the Jurisdiction (*viz*) at *T.* which shall not be intended to be within the Jurisdiction, unless it be so surmized; and it was said whatever thing may be traversed in Inferior Courts shall not be given in Evidence, nor shall be supposed to be within their Jurisdiction. *Sid. 157. Drake and Beer.*

Transitory Actions.

It is said in *1 Roll. Abr. 548.* if a Bond be made out of the Jurisdiction of the Court, though the Action brought upon it is transitory, yet such Inferior Court hath not Jurisdiction of any thing which ariseth out of the Jurisdiction, and therefore cannot hold Plea. *Richardson and Bernard.* So it's said Inferior Courts may not hold Plea of Obligation, Battery, or other transitory Actions, unless it be within the Jurisdiction of the Court; for the Court is limited to things arising within the Jurisdiction, *Q.* for it's the common Practice of such Courts otherwise.

Coventry Court.

Error of a Judgment in *Coventry*: Error assigned was, because the Judgment being by *nihil dicit* in Debt was discontinued, for the Continuance was taken until the next Court, which is uncertain, as in *Dier 262.* But it was answered, That in *Coventry* there is no day certain for the keeping their Courts, for sometimes it is held within a Fortnight, and sometimes within three Weeks. Judgment affirmed. *Cro. Jac. 254. Jesson and Laxon.*

Discontinuance.

Officer of an Inferior Court when he justifies by Proceedings there, ought to shew the Jurisdiction either by Prescription or Charter; and if by Charter, there ought to be a *Profert in Cur.* of the Letters Patents. But if the Plea be pleaded by a Stranger, it is not requisite for the Impossibility. *1 Crook 46. per Twisden,* but *Windham contra,* no Man is bound *proferre* his Letters Patents, except in Case of *Quo Warranto.* He which justifies as Justice

Where one is bound *proferre Literas Patentes.*

Justice of Peace need not shew his Commission. 1 Sid. 311. *Whate and Alport.*

Error of a Judgment in *Colchester*, for that in *Assumpsit* the Verdict found Damages and Costs; and the Judgment was, *Quod querens recuperet de dampnis*, and Costs found by the Jury to 53 s. 4 d. *de Incremento per Cur. adjudicat.* and he doth not say *ex assensu le Plaintiff*, or *ad requisitionem le Plaintiff*, as all the Precedents are; for Costs ought not to be inserted for the Plaintiff but at his Request; and the Judgment was reversed. *Cro. Jac.* 587. *Sache and Yeoman.*

Action on the Case in the Court of *Launceston* in *Cornwall*; Plaintiff declares, that where he was Attorney of the Hundred of S. in *Cornwall*, the Defendant having Communication of him with J. S. of his Profession, said *he was a Cheat.* After Verdict and Damages for the Plaintiff, this is Error, because the Jury cannot enquire whether the Plaintiff be Attorney of the Hundred Court, this being out of their Jurisdiction, and this being the principal Cause of Action. 1 *Rolls Abr.* 546. *Faces and Haddon.*

Jury not to enquire, if the Cause of Action be in a Foreign Jurisdiction.

What Witnesses for a Corporation in a Tryal shall be allowed or not.

Action was brought by the Corporation of Weavers in *Norwich*, for a Penalty against a Weaver for working in his Trade in Harvest-time, contrary to an Ordinance by them made; and *Atkins*, Justice, allowed one of the Corporation to be a Witness, though one Moiety of the Penalty was due to the Corporation. *Lent. Ass.* 1657.

Action of Debt was brought Summer Ass. Suff. 1699. by the Town of *Ipswich* for 50 l. a Fine set on one chosen Common Council Man (called there Prime Constable) for refusing to renounce the

the Covenant, &c. and the Town-Clerk (though a Freeman) was allowed a Witness to prove Election, Refusal, &c. and the Fine set; which is for necessity, for that none other are or ought to be present at those Acts. *Rainsford Just.*

Per Hale Chief Justice, Norfolk Summer-Affizes, 1668. A Freeman of *Lyne* is not an allowable Witness to prove the Custom of Foreign Bought and Foreign Sold in that Town. *Harwick contra Twels.*

In a Tryal at Bar, where an Estate for Life is limited to *J. S.* the remainder to the Poor of the Parish of *Greenwich*, by Will; the Inhabitants of *Greenwich* were allowed to be Witnesses to prove the Will. *Townsend and Roane. 1 M. 1658. B. R.*

Note, In Action by Dean and Chapter, Mayor and Commonalty, Brother to one of the Commonalty, &c. is a good Challenge.

Information in nature of *Quo Warranto* for taking a Half-penny *per Chaldron* for all Sea-Coals imported to *London*. The Defendants prescribe for the Duty, and Issue upon the Prescription tryed at the Bar. The Defendants produced several Citizens, Free-men of *London*, to prove the Prescription; and it was objected they ought not to be Witnesses *quia in propria Casu.* But *per Cur.* it appearing that the Mayor and Sheriffs have all the Profit of this Toll, although to the Benefit of all the Corporation, whereof all the Citizens and Free-men are Members, yet they have not any particular Profit thereof to themselves, they were sworn as Testimonies; for it shall not be intended that they would be partial for so small Advantage, and so remote. 2 *Levin. 231.* the King against the Mayor, Citizens and Commonalty of *London*.

Members of a Corporation Testimonies for the Corporation.

Action

Action on the Case was brought, for that the Plaintiff being an Alderman of *Canterbury*, and put out of his Place, and had sued a *Mandamus* to be restored, The Defendant, *falso, &c.* procures a Return to be made in the Name of the Mayor, Aldermen and Commonalty of *Canterbury*, and set out all the Return in *hac verba*, and the Falsity of it, by which he lost his Place. At the Tryal the Defendant produce seven Free-men of *Canterbury* as Testimonies for him to prove the Verity of the Return; to which it was objected, that they ought not to be received because they were Free-men of *Canterbury*; and produce a By-Law there made, that this Return was ordered to be made at the Charges of the Corporation; to which the Defendant's Council shewed a Release, by which the Defendant had released to the Mayor, &c. all Advantages and Demands which he hath by this or any other Order, *aut alio modo quocunq;* and *per Rainsford & Twisden*, the Testimonies were refused to be sworn, and the Jury gave Verdict *pro Quer.* But afterwards the Court conceived that they ought to be received. 2 *Levin.* 236. *Enfield and Hills.*

Error to reverse a Judgment in the Court of Ely.

1. **T**HAT he did not shew in the Stile of the Court how *Ely* had Power to hold Plea, either by Charter or Prescription.

2. He said at such a Place in *Ely* he did promise, but shews not that it was within the Jurisdiction of *Ely*.

3. That it was upon a Consideration to Surcease a Suit in the Chancery that the Defendant did promise, but shews not that at the time of the Promise there was a Suit depending.

Per

*Ely, Chester,
Durham.*

Per Jones Justice. *Chester* and *Durham* are generally known, and therefore it's good to say, *Placita text. apud Chester*, and the Party need not shew how *Chester* hath Jurisdiction: But it is not so of *Ely*. *Hid* Chief Justice. In all particular and private Jurisdctions, if they come to be certified here in a Writ of Error, you must set out their Power; but if they have a Power by Statute, as *Wales*, then it need not be set forth. Judgment was reversed. *Letch. 180. More 9. Godb. 380. Gunter's Case.*

Enquiry of Damage, before whom.

Battery in *Plimouth* Court before the Mayor and Bayliffs there, and Not Guilty pleaded; but afterwards the Issue was waved, and Judgment was given for the Plaintiff; and a Writ to enquire of Damages was awarded to the Serjeant of the Mace, that by the Oath of twelve he should enquire; and the Writ was made returnable at the next Court before the Mayor and Bayliff, and upon a Writ of Error brought, it appeared by the Record certified, that the Writ to enquire of Damages was taken before the Mayor of *Plimouth*, who was also Judge of the Court, and for that Cause reversed. For the Writ warrants the Enquiry to be before the Serjeant of the Mace, who by the Writ for that purpose is made a distinct Officer; and so a Judgment to recover those Damages taxed before a wrong Officer, to whom the Writ was not directed, is erroneous. *1 Brownl. 203. Bayle and Moon.*

Dicit omitted in the Declaration.

Error of a Judgment in *Worcester* Court, for that the Declaration was, *R. H. queritur versus H. Field de placito quod reddat ei 20 l. quas ei debet & injuste detinet. Et unde idem quer' per M. Attorn. suum quod cum præd. Def. &c.* *Per. Cur.* This is no Declaration for want of the Word (*dicit*) objected, that *quer.* may be intended *queritur*, and then it is, *Unde idem queritur*; yet this will not aid it, for then it is not certain to what this Word *idem* shall

shall refer, and it shall be said to refer to the Defendant, because it is *prox. antecedens*. *Yelv. 103. Field and Hunt.*

C A P. V.

Stile in a Corporation-Court.

Of the Stile in a Corporation-Court, and what Mistakes are Error or not. In Inferior Courts, the Authority whereby they are held, and the Names of the Judges before whom they ought to be expressed. No Judgment in a personal Action before Appearance. No Plaint can be entred but at a Court. The Plaint is as the Original at Common Law, and how the first Entry ought to be. Of the Court of Piepowders. By Custom may hold Plea of Bonds, &c. Court by Prescription. Not taken away by the King's Confirmation. Of Bail in Inferior Corporations to appear. Who may take such Bail. Bail to pay the Condemnation or to render the Body. Before whom to be taken and why.

ERROR of a Judgment in Leicester in Action *sur Case*, because the Stile of the Court was, *Placita coram J. S. Majore, & Joh. Chapman Recordatore, & J. D. & J. N. Aldermannis Burgi prædicti secundum consuetudinem Burgi prædicti.* and a Plaint being entred upon a Summons, a *Non est inventus* was returned at a Court holden *coram dicto J. S. Majore, & J. N. & J. D. Aldermannis Secundum Consuetudinem Burgi prædicti. &c.* omitting the Recorder, which was
F
objected

objected to be *coram non Judice*. *Sed per Cur.* it may be, that at the first Court holden the Recorder was there, and at the second Court he was absent, and the Court is well held by Custom there before the Mayor and two Aldermen. *Cro. Car.* 572. *Bryan and Wikes.*

Error of a Judgment in Debt in *Com. B.* because the Judgment was that the Mayor, Commonalty and Citizens of *London* should recover the Debt and six Pounds for Costs, *eidem Majori & Communitati* (omitting *Civibus*); and so no such Corporation, was held to be Error, but it was amended afterwards. *Cro. Car.* 574. *Anne Healing's Case.*

Action on Escape, and declares he delivered a Writ to the Sheriff of *Nottingham*, who made a Warrant to the Bayliff of the King's Liberty of *Newark* to execute it; which Warrant was delivered to one *L. Deputy* of the Lord *Burleigh*, *Ballivo Libertatis Dom. Regis Wapentagii sui de Newark*, who arrests him, and the Defendant rescued him out of the Custody of the said Deputy. He saith he was rescued from the Deputy of the Bayliff of the Franchise; and does not say, from the Bayliff himself or the Sheriff. *Per Cur.* it's good. For in this Action on the Case he shall shew the Truth as it is *in rei veritate*, and it's not like the Returns of Rescues on Indictments, which say, it was done to the Sheriff or Bayliff himself. It was moved for Error, 2. Because it is alledged the Lord *Burleigh* was *Ballivus Libertatis Dom. Regis de Newark*, and the King cannot have any Liberties, for they are extinct when they are come into his Hands, *sed non allocatur*: For the King may have such Liberties by the Suppression of Abbeys (which are not extinct but revived *per Stat.* 32 *H.* 8.) or by some other ways; and it shall not be intended to be extinct unless it be shewed: and the Bayliff of a Liberty may well have a Deputy. *Cro. Jac.* 241. *Kent and Ellwis.* Defen-

Defendant justifies by Process to the Bailiff out of the Court of the Honour of P. and does not shew any Process was returned, which being an immediate Officer ought to be shewed; *contra* of an under Officer. 1 *Keb.* 156. *Haywood* and *Wood*.

It is said in *Yelv.* in *Mouſe's* Case, That if an Inferior Court hold Plea, and in the Stile of the Court it doth not appear how they hold it, (*viz.*) *per* Charter or Prescription, the Proceedings in this Plea are erroneous, and all which follows upon it: For all Jurisdiction to hold Plea rests in the Crown, and therefore it ought to be ascertained to the Court of the King how this Power is derived from the Crown, and this was adjudged upon a Record removed out of *Gravesend*. *Yelv.* p. 46.

The Stile of the Court was, *Placita coram Magore, &c. Virtute Literarum Patentium H. 6.* yet the issuing out Process and filing Bail was entered *Secundum Consuetudinem Cur.* and cited 1 *Cro.* 143. *Long* and *Neathercoat's* Case, where the same matter was held to be Error, for the Court being held within time of Memory could have no Custom to warrant the Proceedings, *sed non allocatur*; for it is according to Law and the just Course of the Court. 2 *Ventr.* 72. *Bernard's* Case.

Error of a Judgment in *Burton* upon *Trent*. The first Error assigned *ore tenus*, because it was not shewn in the Stile of the Court, by what Authority it was held, (*viz.*) by Charter or Prescription. The second Error, because the Stile of the Court is *Coram Seneschallo & Ballivo Domini Paget*; and he doth not shew their Names. *Per Cur.* they are Errors incurable. For in these Inferior Courts the Authority whereby they are held, as likewise the Names of the Judges before whom, ought always to be expressed; otherwise the King's Courts cannot take Conuſance of their Authority. 22 *Ed.* 4. 8 *Cro. Jac.* 184. *Ferrat* and *Caldwell*, so in *Johnson*

In Infer. Courts the Authority whereby they are held, and the Names of the Judges before whom ought to be expressed.

and *Underwood's Case*, *Cro. Jac.* 493. Error of a Judgment in *Leicester* in *Assumpsit*, because in the Stile of the Court it doth not appear by what Authority the Court was held, whether by Custom, or by Virtue of Letters Patents from the King. *Et per Cur.* the Jurisdiction ought to be shewed.

In a Writ of Error upon a Judgment given in an Inferior Court, if the Stile of the Court be enter'd in this manner, *Coram J. S. Majore & les Burgesse Burgi prædict.* and saith not, *secundum Consuetudinem Villæ prædict.* This is Erroneous, for it ought to appear to the Court where the Record is removed by Writ of Error, That they had Power to hold Plea either by Prescription or Charter. *Bowman and Hickson's Case*, 1 *Rolls* 795.

Entring of Plaints and Appearance.

NO Judgment ought to be given against the Defendant in a Personal Action before Appearance; for before that time he may not make default, otherwise it is in real Actions.

The Entry in Replevin in the Court of *Windsor* (being a Three Weeks Court) was the 7th of *May* and the Plaintiff afterwards did declare of taking the Cattel the 25th of *May*. *Per Cur.* it is Error, because no Complaint can be enter'd but at a Court, and this Entry of the Complaint was mesne between the Court-day, and so the Declaration is not warranted, no Custom being alledged to maintain such an Entry. *Godb.* 266. 1 *Rolls Rep.* 238.

Writ of Error was brought upon a Judgment given in *Leicester* in Debt. It was assigned for Error, because in that Suit there was not any Complaint; for in all Inferior Courts the Complaint is as the Original at the Common Law, and without that no Process can issue; and here upon this Record nothing is entred but only that the Defendant *Summonitus fuit, &c.* and the first Entry ought to be *A.B. quer. vers. C. &c.*

Per

Per Cur. a Plaint ought to be entred before a Proceſs iſſue forth ; and this Summons which is entred here is not any Plaint. Judgment was reverſed. 1 *Leon.* 302. *Savage and Knight.*

The Mayor and Burgeſſes of *Derby* brought their Action as Mayor and Bayliſſs of the Town of *Derby*, & *ejuſdem Burgenſes Villæ*: This is no ſuch miſnomer as to abate the Writ ; for it is all one in Subſtance. *Cok. Entr.* 541. *Vide ſupra Jurisd.*

The Court of Pie-Powders.

Properly a Court of Pie-Powders is for Fairs and Markets, and for Cauſes ariſing within Fairs and Markets, and not for any other. But *per Cur'* a Court of Pie-Powders is ſo termed for the ſpeed thereof, and may be by Cuſtom in Villages or Burroughs for any Cauſes, as Debts upon Bond, or otherwiſe: For they are Courts raiſed by Cuſtom and Preſcription, and may be for any Cauſes done at any time, being tranſitory and perſonal. And ſo they be in divers Cities, as in *Bristol*, *Glouceſter*, *Mich.* 8 *Fac. Rot.* 146. *White and Hunt*, where ſuch a Judgment in *Glouceſter* was affirmed to be good, *Cro. Car.* 45 *Hodges Caſe*, *Hill.* 31 *El. Perd and Chambers*. Such a Cuſtom in *Canterbury*. And the Caſe of *Goodſon and Duſfield*. *Cro. Fac.* 313. in *Rocheſter* in Debt upon Bond, and the Record there was, *Curia Dom. Regis prædict. pulveriſati tent' apud Civitat' Roſſens coram Majore & duobus concivibus ſecundum Conſuet' Civitat' a tempore cujus, &c. ac ſecundum Privileg' & Libertat' &c. conceſſa & confirmata, &c.* and it was aſſigned for Error, that this Stile of the Court, that it is by Cuſtom of the King and his Progenitors, *conceſſa & confirmata, &c.* is repugnant in it ſelf, for the Charter determines the Preſcription. *Sed non allocatur*, for a Court being by Preſcription is

By Cuſtom.

Court by Prescription not taken away by the King's Confirmation.

not taken away by the Grants and Confirmations of Kings; but they may use their Charters as Confirmations or as Grants, or may claim those Liberties by Prescription, notwithstanding such Charters. Another Error assigned *ore tenus*, was, That the Court being (as it is in the Stile of the Court) *coram Majore & duobus Concivibus*, the *Venire Facias* is made returnable *coram J. S. Majore vel Deputato meo & coram duobus Concivibus* at such an Hour, which is not good: For it doth not appear that either by Custom or Charter, the Mayor might make a Deputy, or that Process should be returnable before a Deputy; and therefore the *Venire Facias* is misawarded, and not aided by the Stat. of *Feofayls*, and the Court inclined to that Opinion. The Court being stiled a Court of Pie-Powders (which is a Court incident to Fairs and Markets, and for Causes only arising within them) shall not be intended a Court, unless it be shewn to be held by Charter or Prescription. *Cro. Car.* 46.

Of Bail in Inferior Corporations and Franchises.

Bail to give Appearance.

ONE was arrested by Precept of the Bailiff of a Franchise, and the Bailiff put the Party to Bail for his Appearance; and at the day, the Party arrested was demanded and made default; and Judgment was presently given against him, *Quia defaultam fecit. Quære*, If giving Bail to Appearance shall be taken for an Appearance? And admitting that it be, then Judgment ought to be entred by *Nilil dicit*, and not *per Defaultam fecit. Sid. p.* 32. *Burges and Pierce.*

The Serjeant (in *London*) upon tender of Bail is not bound to set the Party at large, unless the Sheriff send a Warrant testifying this to him. *Vide sup. Percivall and Samon's Case.* Tender of Bail.

Scire Facias against the Defendant as Bail for one *L.* in an Action brought in *Lyn.* It was a Debt for 70 *l.* *Capias* issued out against *L.* directed to the Serjeant of the Mace there, who returned *Cepi Corpus*, and that the said *L. secundum Consuetudinem Villæ prædictæ invenit ei securitatem, viz.* one *H.* (who is dead since) and the Defendant *ad comparend.* and if he were condemned to satisfy the Debt or render himself to Prison, and it was so far proceeded in the said Court, that Judgment was given for the Defendant; and thereupon a Writ of Error brought and Judgment reversed. *Per Cur.* this Bail found before the Serjeant, though it be alledged to be *secundum consuetudinem Villæ*, is not good: For the Bail, being Matter of Record, cannot be found before any but the Judge of the Court; but the Bail for Appearance only may be taken by the Serjeant; and for this Cause the Bail is not chargeable. *Cro. Jac. 94.* Bail found before a Serjeant.

Vide infra Sect. subsequent.

Vide supra Cap. 2. as to Bail in London.

C A P. VI.

Of removing Causes, and Habeas Corpus.

On a Procedendo if the Bail on remanding the Record be dismissed. Upon removal by Habeas Corpus or Priviledge. Bail is requirable of what nature soever the Action be. Where Bail to be entred. Of Caveat for good Bail, and of Exceptions to Bail. Habeas Corpus when returnable. Of Bail de bene esse. When and within what time a Procedendo to be granted. Upon removal of a Cause by Habeas Corpus, where the Action to be Laid. No Writ to remove a Suit commenced in an inferior Court to be obeyed unless it be delivered to the Steward, &c. of the same Court before Issue or Demurrer joyned. A Suit once remanded shall never afterwards be removed. A Suit when the thing in demand exceeds not 5 l. shall not be removed. The Steward in the inferior Court upon such removal of Causes to be an Utter Barrister. The Statute 21 Jac. c. 3. extends to such Actions only where the cause of Suit is properly arising within the Village. The course of the Kings-Bench in such case.

S*Cire Facias against the Defendant being Bail in Yarmouth in Debt, for that the principal did not render his Body after Judgment, nor pay the Condemnation. Defendant pleads, that after the first Action brought and Bail found, the Cause was removed by Habeas Corpus, and Bail here accepted, and afterwards the Cause was remanded*

manded by *Procedendo*, and then Judgment given against the Principal, and so that the old Bail was discharged. *Per Cur.* the Bail is in this Case chargeable: for when the Record is remanded by *Procedendo*, it is as if it never had been removed, and there is no Record of the removal thereof. But by *Brook*, *Procedendo* 13. If a Man find Bail in *London* upon an Arrest, and the Cause is removed by *Habeas Corpus* into the *Kings Bench*, and afterwards remanded by *Procedendo*, the Bail is dismissed and shall never be revived. As to that the Court put this difference, If it be removed and Bail filed above, and afterwards in another Term it is remanded, then it is otherwise, for there the Court is possess'd of the Cause, and remained so for a Term, and a Record is made thereof. But not so, if it be remanded the same Term it is removed, for there is no Record made thereof; and so *Brook* is to be intended. *Cræ. Jac.* 363. *Codner and Dalby.*

Upon a *Procedendo* if the Bail on the removing the Cause be dismissed.

If the Defendant be arrested in the Mayors Court or Sheriffs Court of any City or Corporation, and the Defendant by any Writ of Priviledge or *Habeas Corpus*, did remove the same out of the said Corporation, to be tryed at Common Law above: *Note*, Upon such Process, Bail is requirable of what nature soever the Action be.

Bail on *Habeas Corpus*.

Then the Bail being taken by any Judge of the same Court, must be entred in the same Prothonotaries Office, where the said Writ of Priviledge or *Habeas Corpus* issued and was sued out.

Where to be entred.

When a Cause is removed out of an inferior Court, the Plaintiff or his Attorney in such Cause ought duly to enter their Caveats for good Bail with all the Justices of this Court. And the Attorney for the Defendant which would remove any such cause, must give notice to the Plaintiff or his Attorney in the inferior Court of the time when the Bail shall be put in, and of the names of the said Bail, and where

Exception to
Bail.

where they live, and shall make Affidavit of such notice ; and if the Plaintiff or his Attorney will not attend to take exception to the Bail at the time of the taking thereof, nor within fourteen days after, then the said Bail shall be forthwith filed.

Habeas Corpus
when return-
able.

Note, That Writs of *Habeas Corpus* directed to the inferior Courts of *London* and *Westminster*, *Southwark*, and other Courts within five Miles of *London*, may be returnable immediately ; and if the Defendant intendeth to be bailed thereupon, or within four days after allowance of the said Writ, the day of which allowance being indorsed by such Officer as allows the same on the back of the said Writ, notice is to be given in writing of the Names and Addition of the said Bail, the time when, and the Judge before whom the same is to be put in, to the Plaintiff or his Attorney, or him that causes the Plaint to be entred ; or if none can be found, then notice of the Premises to be left in writing with the chief Clerk of the inferior Court or his Deputy, by the Party that tenders the Bail or his Attorney and Oath made thereof, otherwise the Bail not to be taken, and a *Procedendo* granted, if desired, before Bail accepted, that if no Bail in such case be put in within eight days after the *Habeas Corpus* allowed in those Courts, when it is returnable *immediate*, a *Procedendo* may be granted by any Judge of this Court (C. B.) if desired, before Bail taken.

Bail *de bene*
esse.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*, and if no Exception be taken within twenty days after notice given to the Plaintiff or his Attorney of the names of the Bail, and before whom taken ; then upon Oath made of such notice, the Bail to be delivered out to be filed.

Note, That if Bail upon an *Habeas Corpus* be taken before a Judge at his Chamber, and not excepted against ; if it be not filed within four days
after

after the twenty days, a *Procedendo* may be granted *Procedendo.* upon a Certificate that it is not filed. All Writs of *Habeas Corpus* returnable in Court, are to be returnable at a day certain.

Upon a Cause removed by *Habeas Corpus* out of the Courts of *Canterbury, Southampton, Hull, Litchfield* or *Pool*, which are Counties where the Judges of *Nisi Prius* seldom come; if the Action be transitory it must be Laid in the County of *Kent, Southampton, York, Stafford* or *Dorset*, where the Town and County lyeth. Upon *Habeas Corpus* where the Action to be laid.

By the Statute 21 *Jac. c. 23*. It is ordered, That no Writ of *Habeas Corpus, Certiorari*, or any other Writ other than Writs of Error or Attaint sued forth from any of his Majestys Courts of *Westminster*, or the Courts of the grand Session of *Wales*, to stay or remove any Action, Bill, Complaint, Suit, or Cause brought commencing or depending in any Court or Courts of Record within any City, Liberty or Town Corporate, which have any Jurisdiction, Power, or Authority to hold Plea in that Action, Complaint, Suit, or cause, the same cause of Action, Plaintiff or Suit arising or growing within the same Liberty, City, Town-Corporate, or Jurisdiction, shall be received or allowed by the Stewards, Judge, or Judges, or Officer or Officers of the Court or Courts wherein, or to whom any such Writ or Writs shall be directed and delivered, but that he and they may proceed to the said Cause, as tho no such Writs were sued forth or delivered to him or them, except that the said Writ or Writs be delivered to the Steward, Judge or Officer of the said Court before issue or demurrer joyned in the said Causes so depending in such Court, inferior Court of Record having power to hold Plea, so as the said Issue or Demurrer be not joyned within six Weeks next after the Arrest or Appearance of the Defendant or Defendants to such Action or Suit.

If

A Suit once remanded shall never afterwards be removed.

If any such Suit shall be removed by any such Writ, if afterwards the same Action, Bill, Plaint, Suit or Cause shall be remanded by any Writ of *Procedendo* or other Writ, that the same Action, Suit, Plaint shall never afterwards be removed or stayed before Judgment by any Writ or Writs whatsoever.

A Suit when the thing in demand exceeds not 5 *l.* shall not be removed.

And it was further enacted, That if in any Action, Bill, Plaint or Suit, not concerning Freehold or Inheritance, or Title of Land, Lease, or Rent, which shall be conceived in any such Court of Record, or in any City, Liberty, or Town Corporate, or elsewhere, if it shall appear to be laid in the Declaration, that the Debt, Damages, or thing demanded, doth or shall not amount to, or exceed the Sum of 5 *l.* That then such Action, Bill, Plaint, or Suit shall not be stayed or removed into any of his Majestys Courts of Records at *Westminster* by any Writ or Writs whatsoever, other than Writs of Error or Attaint : Provided that this Act shall extend only to such Courts of Record in Cities, Liberties, Towns Corporate, or elsewhere, and for so long time only as there is or shall be an Utter Barrister of three years standing at the Bar of one of the four Inns of Court, that is or shall be Steward, Under-steward or Deputy-steward, Town Clerk, Judge or Recorder of the same inferior Court, or that is or shall be from time to time assistant to such Judge or Judges of such inferior Courts as shall not be Utter-barristers of such standing as aforesaid, and there present, in which such Actions, Bill, Plaints and Suits, are or shall be brought commencing, depending, and not of Council in any Action, Suit, or Cause then depending in the same inferior Court,

This Act shall only extend to Courts in Liberties, &c. and when the Steward is an Utter barriller.

Provided that this Act, or any thing therein contained, shall not extend to any Action, Bill, Plaint, Suit or Cause, wherein any such Foreign or other Plea shall be pleaded, as could not be tryed or determined without the Jurisdiction of such inferior Courts.

This Act shall never extend to admit any foreign Plea.

For

For the better understanding of this Act I shall cite a Case, one *Claphams Case*, Cro. Car. 79. Upon an Information to the Court that an *Habeas Corpus* being awarded to the Court of Guilford in Surrey, to remove a Cause there depending, they notwithstanding proceeded. Upon examination it appeared that the Writ was delivered after the Issue joyned, (*viz.*) *per minas* pleaded, and that Issue was joyned more than six Weeks after the Action brought, so as by this Statute 21 Jac. the Judge might refuse. And it was resolved by all the Court, because it was in an Action of Debt on Obligation of 200 l. not made within the Village, that the Statute doth not extend to this Case, for that provided against the removing by *Habeas Corpus* such Actions only where the cause of Suit is properly arising within the Village. 2. For as much as the proceedings were before one who was Town-Clerk and Attorney of the Common Bench and not an Utter-barrister (as he ought to be by an express Proviso in the Statute, and such Utter-barrister ought to be there present, and cannot have a Deputy, but such a one as is Utter-barrister, and present at the Tryal) it was resolved, that after the *Habeas Corpus* delivered the said Proceedings were ill and not warranted by the Statute, and their proceeding after an *Habeas Corpus* to Tryal and Judgment were also void. Whereupon a *Superse-deas* was awarded, and the Judges of the *Kings-Bench* agreed, that their Course in the *Kings-Bench* was to disallow proceedings in an inferior Court, after an *Habeas Corpus* delivered, unless it were a Cause arising within the Village or Corporation.

It hath been some Question, when Causes in inferior Courts are removed into B. R. if upon the new Statute there shall be no more Costs than Damages. The Case was *Hill* 26 and 27 Car. 2. Trespass in inferior Court, *ad damn.* 4 l. 19 d. the Defen-

In Causes removed, where the Statute of no more Costs then Damages takes place.

Defendant removes the Cause into the *King's Bench* where it was tryed, and 15 s. Damages was given by the Jury. It was said for the Plaintiff, that this Cause is not an original Cause in this Court, but brought here by *Habeas Corpus*, and this not within the Statute, and that so it had been ruled in *B. C. Per Cur.* it seems reasonable, it being removed by the Defendant; otherwise, if it were removed by the Plaintiff, for then every Plaintiff might commence trivial Actions in inferior Courts, and after remove them here and defeat the Statute, so be more vexatious than before the Statute; but he would advise, *Q.* the Rule in 2 *Lev.* 124. *Gavel* and *Scudamore*.

Judgment in inferior Courts not void, because the Judge had not taken Oaths.

Error of a Judgment in *Newberry* Court assigned, that the Mayor, who was Judge, did not take the Sacrament and the Oath according to the Statute, 25 *Car.* 2. by which his Office was void before the Judgment, and so *coram non judic.* and so was the opinion of the Court, *B. R.* in *Hipsly* and *Tucks* Case. *Hill.* 28, 29 *Car.* 2. But afterwards *Hill* 30 & 31 *Car.* 2. in *Denning* and *Norris's* Case it was adjudged *Contra*, 2 *Lev.* 184. Tho the Statute makes the Office void, this is as to himself, so as to make him finable for intermeddling in it, but not as to Strangers, who do not know whether he hath taken the Oaths or not; also he was Judge *de facto*, and if a Steward *de facto* admits a Copyholder its good. *Dunning* and *Norris's* Case was error of a Judgment in *Norwich* Court assigned, that the Sheriff before the Judgment was given, had not taken the Oaths, nor subscribed, &c. The Defendant pleads that the Oaths and Declaration were not tendred to the Sheriff. Plaintiff demurs. Resolved, That this is not assignable contrary to the Record and Admittance of the Parties, and they held the Tender is traversable. 2 *Lev.* 242.

C A P. VII.

Tryal, Verdict, Jury, *Venire*, *Vid. Supra*, Tit. Jurisdiction.

Ad tunc & ibid. to what it refers. Where the Inquest shall be by all Denizens and no Foreigners, Stat. 27. Eliz. & 35 H 8. of sufficiency of Jurors, extends not to inferior Courts. On usurious Bond, tryal to be where the Usury is laid to be. The Parish and Ward in London, how to be considered. Venue de vicineto civitatis, Parish and Ward mentioned in London only. Where Tryal shall be, per Pais, or by the Mouth of the Recorder. Where, and in what Cases tryal shall be in the County next adjoyning. From whence a Venire to be awarded of the Tryal concerning the Corporation. Where P. & Burgus de P. shall be intended all one. Foreign Plea and foreign Voucher. Tryal where the Tort is, and not where Contract was. De vicineto de Vill. and the Jurisdiction extends not out of the Village. Where the Parish and Village shall be intended all one. Where a thing is alledged in a Ward, how the Tryal shall be. De vicineto de Lyme, which extends to the Neighbourhood out of the Jurisdiction. yet good.

Action on the Case was brought in Redding Court, the Plaintiff declares, that in consideration that the Plaintiff would carry certain Meal from Redding to London, the Defendant, *ad tunc & ibid assumpsit* to pay *quantum meruit*, the promise upon this Declaration shall be taken to be made at London, which is the next antecedent, and so out of the Jurisdiction of Redding, and the Judgment given in Redding was reversed. 2 Rol. Abridg. 252. At

At the *Nisi Prius* the Bayliffs of a Village may shew a Charter, that to try Contracts, &c. within the Village, the Inquest shall be all of Denizens, without Foreigners, and this shall be allowed, and the Foreigners shall be ousted. 29 *Aff.* 15.

So may the Burgesses who are put upon a Jury out of the Burrough, if they have such a Charter. 30 *Aff.* 1.

Statute 27 *Eliz.*
& 35 *H. 8.* to
what Jurors it
shall extend.
The *Venire* in
a Burrough.

Note, The Statute 27 *El.* c. 6. or 35 *H.* 8. of the sufficiency of Jurors extend not to Cities, Towns Corporate, or other privileged Places, so that they shall be returned as they lawfully might have been. *Quar. de Stat. W. and M.*

In inferior Courts within Burroughs, the *Venire Fac'* is *Quod Venire Fac' 12 liberos Burgenses Bur- gi & parochie de B.* altho there may be twelve Burgesses which are not Inhabitants. *Rol.* 2. 622.

Venue.

In Debt upon a Bond in *London*, the Defendant pleads an usurious Contract in *Warwick*. The Plaintiff replies, the Bond was made upon good consideration, *absq; hoc*, that it was made for such usurious Contract; the Tryal shall be in *Warwick*, for the Bond is confessed, and the Usury in *Warwick* is only in Question. *Cro.* 3. 195.

Venire.

In *Assumpsit* laid at *London* in *Warda de Cheap*, the *Venire* was *Parochia de Arcubus in Warda de Cheap*, whereas no Parish before was mentioned in the County. *Per Cur.* the *Venire* was ill laid in the County, for a *Venire Facias* may be of a Town, Parish, Mannor, or other place known, but not of an Hundred or Ward, 1 *Cro.* 165. The Parish in *London* is in lieu of a Village, and the Ward of an Hundred. *Rol.* 2. C. 621. 622. *Tit.* Tryal.

Parish and
Ward in *Lon-
don*

Where the *Vifne* is laid to be at a City, in Action brought in a superiour Court, or within the City all *Venire Facias's* are awarded new *de Vicinet' civitatis*, which is intended as well *de civitate* it self, as *de vicinet' infra jurisdiction'* of the City;

City; so it is *de vicinet' civitat'* or *de civitat'* *De vicinato civitatis.*
Coventrie, Ebor' Saru. Excet. and all other Cities which are Counties in themselves. In all Places besides *London* no mention is made of the Parish or Ward; but in *London* the Parish and Ward are mentioned, therefore it was adjudged, 2 Cro. 150. That it was not good to alledge any thing done in *London* generally. In *London* the Parish and Ward are mentioned, but in no other Places.

In Action on the Case for words supposed to be spoken at *Bridgnorth* in the County of *Salop.* Defendant pleads that he spoke them as a Witness upon his Oath, upon an Issue tryed at *Chard* in the County of *Somerset.* Plaintiff replies, *De sort tort demesn.* and thereupon it was tryed by a *Venire Facias* at *Bridgnorth*, and Error was assigned; because it ought to have been by a *Writ* of *Chard*, where the Justification arose, and it was held clearly to be a mis-tryal, and not aided by the Statute of *Jeofails*, and the Judgment was reversed. 3 Cro. 468. 261, 870. *More* 410.

So is the Case of words spoken in *Warwickshire*; Thou art a Thief, and hast stolen my Iron. The Defendant justifies and saith, The Plaintiff stole Iron in *Leicestershire*, and brought it into *Warwickshire*, and therefore he spoke the words in *Warwickshire*: If the Plaintiff replies, *de injuria sua propria absq; tali causa*, the Jury shall come from *Leicestershire*, to which the *absq; Tal. causa* refers; for the words are acknowledged. 2 Rel. Abridg. 598, 623.

In Trespass in *B. C.* for taking away a Bag of Pepper. The Defendant justified as Servant to the Mayor and Commonalty of *London*, for Wharfage due to them by the Custom of *London*, which the Plaintiff refused to pay; the Plaintiff replied that the Custom did not extend to him, because he was a Freeman of the City, and ought not to pay Wharfage; to which the Defendant rejoined, that the

Custom extended to him as well as to Strangers; upon which Issue was joyned. And,

Trial *per Pass.*
per the Mouth
of the Recorder.

1. Resolved, That the Issue should be tryed, *per Pass*, and not by the Mouth of the Recorder, because he certified nothing but what the Mayor and Aldermen direct, who are concerned in the Cause.

Trial in the
County next
adjoyning.

2. That the *Venire* should not be awarded to the Sheriffs of *London* nor *Middlesex*, because the Tryal there are by Freemen, but it shall be to the County next adjoyning, *viz.* to the Sheriff of *Surrey*. So where any City is concerned, the *Venire Facias* shall not be directed to Officers of the City, but to the County next adjoyning. *Hob. 85. Stiles 137. More 871. 15 Ed. 4. 18.*

Note, It was adjudged Error in an inferior Court that the *Venire Facias* was awarded *secundum consuetud. curiæ*, which ought to be *per Cur. Read vers. Moor. M. 1650. B. R.*

If it be alledged that the Mayor, Bayliffs, and Citizens of *York*, until the 1 R. 2. *que anno*, they were incorporated by the name of Mayor, Sheriffs and Citizens, *usi fuere*, foreign bought and foreign fold, &c. And this prescription is traversed: The *Venire* shall be awarded to the Sheriff of the County of *York*, *de vicineta Castri' Ebor' quod fuit proxime adiacen' civitat' Eborn'* for that the Sheriffs and Coroners of the City were Citizens. 1 *Rol. Abridg. 597. Dier 279.* so is 31 *Affize 17.* if the Issue concern the Mayor and Commonalty of a Town, the Array shall be all of Forreigners.

From whence a
Venire to be a
awarded, if the
Tryal concern
the Corporati-
on.

In trespass of Grass cut in the County of the City of *Coventry*, and the Issue between them was, whether the Mayor and Commonalty disseised the Defendant or not; the *Venire* shall be awarded to the Sheriff of *Warwickshire* to make the Pannel. 15 *Ed. 4. 18.*

If a thing is alledged to be made *apud Burgum de Plymouth*, yet the *Venue* comes from *Plymouth* generally, although the Village of *Plymouth* extends further or narrower than the Burrough; for this is an antient Burrough, as the Defendant hath alledged in his Plea, but they shall be intended to be all one. 2 *Rol. Abridg.* 621.

Jay brought an Action of Debt before the Mayor of *Shrewsbury*, &c. and declared upon a Bond, on Condition to pay Money at *London*, and Issue there was joyned upon the payment. And it was moved how this Issue shall be tryed, viz. if it may be removed by *Certiorari* into the *Chancery*, and thence by *Mittimus* into the *Common-Pleas*, and from thence sent into *London* to be tryed; and when it is tryed, to be remanded back to *Shrewsbury* to have Judgment. *Per Cur.* in real Actions it may be so, but otherwise in personal; for such Actions may be said elsewhere. A foreign Plea pleaded in *London* goes to the Jurisdiction, but upon a foreign Voucher in a Plea real, the Plea shall be removed in Bank to try the Warranty, and afterwards shall be remanded. 2 *Lev. p.* 37. *Jay's Case.*

In Actions on the Case, whereas the Plaintiff lent to the Defendant a Gelding to ride from *London* to *Exeter*, and there to deliver him safe to the Plaintiff, that the Defendant intending to deceive the Plaintiff, rode upon the said Gelding from *London* to *Oxon*, and from *Oxon* to *London*, and by that riding he so abused the Horse that he became of little value, and refuseth to deliver him, tho required at *Oxon*. Defendant on not Guilty, was found Guilty. *Per Cur.* the Tryal, *de vicineto* of *Exon*. is well enough; because the Tort is to be supposed to be done there, and not at *London*, tho the Contract was at *London*. *Cro. Car.* 20. *White and Risdan.*

Error of a Judgment in *Neiberry*. The Error assigned was, that in *Assumpsit* there the Defendant

pleaded *non Assumpsit*, yet the *Venire Facias* was *de Vicineto de Newberry*, where it ought to have been *de Newberry*, for they have not any Jurisdiction

De vicineto de Vill. and the Jurisdiction extends not out of the Village. on out of *Newberry*, 8 H. 5. 1. But the *Venire Facias* is held good both ways, and tho the Corporation do not extend their Jurisdiction out of the Village, yet the *Venire Facias* being awarded *de Vicineto de Newberry*, those of the Town may well be returned, and Judgment was affirmed. *Cro. Jac.* 493.

The Mayor and Burgeſſes of *Liskarrell*, in *Com. &c.* were ſeized in Fee of three Water-mills in *Liskarrell*, *præd.* and preſcribed for them their Tenants and Farmers to have had a Watercourſe running from a place called *Hederbridge* in *Paroch. de L. præd. uſq;* the ſaid Mills. They demised the Mills to the Plaintiff, and that the Defendant *apud L. præd.* between *Hederbridge* upon the ſaid, &c. and the ſaid Mills digged a Trench, and found *pro Quer.* Moved in Arrest, that the *Venue* was from the Village of *L.* where it ought to have been from the Pariſh of *L. ſed non allocatur*, for the Pariſh of *L.* and the Village of *L.* ſhall be intended all one. *Cro. Jac.* 263. Sir *W. Wrey* and *Veſper.*

Where the Pariſh and Village ſhall be intended all one.

In Treſpaſs and falſe Imprisonment at *Briſtol*, if the Defendant juſtify, for that time out of Memory, &c. there hath been a Court of Record at *Briſtol* every Mondy before the Mayor, &c. according to the Cuſtom and Liberties of the City, and that according to the Cuſtom *J. S.* levies a Plaint there againſt the Plaintiff, upon which the Defendant being Serjeant there was commanded to arreſt him, upon which the Plaintiff takes Iſſue that *J. S.* did not levy ſuch Plaint *Prout.* This ought to be tryed *per Pais* and not by the Record; for that matter of Record is mixed with matter of Fact, *viz.* whether the Court was held, and the Plaint levied according to the Cuſtom of the City, which is a matter of Fact,

Trial *per Pais*, and not by matter of Record.

Fact tryable *per Pais*, and the levying of a Plaint is like suing out of an Original, which is not of Record until the return of it into Court. *Hob. Peter and Stafford.*

Action of Debt brought in *Norwich* upon Obligation made in *Parochia S. Petri in Warda de Mancroft in Norwich*, and the Defendant alledgeth the Custom of *Norwich* to be to give the true Debt to the Plaintiff, although it be upon Bond, and for this he prays it may be enquired *de vero debito*. This may be tryed *de corpore Comitatus de Norwich*, for that the Obligation is not in Question, but the Debt. *2 Rol. Abridg. 617. Parmer and Melsbourn.*

If a thing be alledged in a Ward in the City of *Bristol*, the *Venue* shall not be *de civitate* but *de Warda*. Where a thing is alledged in a Ward, the tryal shall be *de Warda*, and not *de Vicineto*.

If a thing be alledged *apud Plymouth*, in the old Town Ward, the *Venue* shall be *de Plymouth* generally; this is good, tho in a Writ of Error upon such Judgment in the Burrough Court it was awarded, that there are three other Wards in the Burrough. *2 Rol. Abridg. 672. Buckham and Lepper.*

If Issue be upon a thing done in *civitate Covenetrie*, or such other City, the *Vifne de vicineto civitatis* is good; for this doth not exclude the City, for this is a County of it self, and may extend into many Villages, *id. ibid.* *De Vicineto civitatis.*

If an Action be laid in *Lyme* by the Custom there, and Issue be there to be tryed, a *Venire de vicineto de Lyme* is good, tho it was objected that this extends to the Neighbourhood, which is out of the Jurisdiction of the Court, for this is the common course in all such inferior Courts in *England*. *2 Rol. Abridg. 623.* *De Vicineto.*

Trover and Conversion for Money in the County of *Essex*, and a Tryal at Bar appointed, the Recorder of *London* moved that the Cause might be tryed in *London*, because it concerned the Office of a

Judges place in the Sheriffs Court in *London*, and insisted it appeared by Affidavits in this Cause, for changing the *Venue*, that the matter in Question arose within, and the City and concerned in it, *Sed non alloc.* 1. Because it doth not appear to the Court upon Record, that the Cause of Action arose within the City, and Affidavits are not sufficient, being out of the Pleadings. 2. Because this Prayer comes too late, being after Issue joyned. 3. Because it appears by the same Affidavits that the City it self is concerned, and that it is against reason that they should try their own Cause, but in an adjacent County. *Hard. 127. Proctor and Philips.*

In Ejectment by Lessee of a College, if the Jury find a special Verdict in this manner, *viz.* that the College let this to *A.* upon condition, and find a special matter in Law, whether the Condition be broken, and that the College supposing the Condition broken by their Bayliff, enter and let this to the Plaintiff, this is not a good special Verdict, without finding of the Command given by the College to the Bayliff to enter to be made by Deed, for otherwise it is not good. *2 Rol. Abridg. 700. Dumper and Sims.*

Inquiry of
Damages.

If a Judgment be given by *Nihil dicit*, in inferior Courts, and the Record is returned, that the Writ of enquiry of Damages was *per Sacramentum proborum & legalium*, omitting (*hominum*) this is erroneous.

C A P. VIII.

Judgment. Error.

Certiorari not to be awarded to an inferior Court, to certify that which the Record should certify. Amendment. What Judgment shall be given in a Writ of Error. The Entry of the Judgment, how to be. Error in Fact. Error in entering up the Judgment in inferior Court. Where, and in what cases Appearance aids the putting in the Declaration before Appearance, and in what Cases not. Suit on a Bill before time of Payment is Error. Action of Dower by way of Plaint in inferior Court, by the Custom of the Court is Error. Error in the stile of the Court. Plaint and Declaration vary. Writ of Enquiry of Damages to be returnable in Court, and not inquiry by Bayliff. Error for saying per Ballivos, and not Ballivos & Ministr' ejusdem Curia. Issue tried the same Court the Venire Facias is returnable is Error. Venire Facias how to be awarded. Process to a Sergeant at Mace, not naming his Name good enough. It must appear from what Place the Venire comes, else its Error. Stat. 27 Eliz. cap. 6. extends only to the Courts at Westminster. The Record in Error comes to be certified in the Names of the Judges of the Court. Recovery in inferior Courts how to be pleaded. Stewards in inferior Courts how to make their Certificates. The Court is held by Letters Patents, and the Process is awarded, secundum consuetudinem Curia, its Error. If Plaint be not entered before Process sued out, it is Error. Court held die dominico, and assigned at the Bar for Error, it was tried by the Almanack. A President of a Writ of

Error of a Judgment in Norwich. The Style and Titles of most of the Corporations in England.

ERROR of a Judgment in the Court of *Darby* in Debt on Bond, and on *non est factum*, found against the Defendant. The Judgment entred was *quod Capiatur*, but the Judgment certified was *ideo in misericordia Capiatur*, and this was assigned for Error. It was moved that these words (*in misericordia*) were struck out by a Line under it, and to inform the Court a *Certiorari* was awarded, which certified the words (*misericordia*) were not in the Judgment, but only a *Capiatur*. But the Court would not allow thereof, and said a *Certiorari* should not be awarded to an inferior Court to certify that which the Record should certify; wherefore not having regard to the *Certiorari*, and the Line underneath is no defacing or drawing them out, and the *Capiatur* was with another hand, it was therefore reversed, and such a Record out of *Norwich* was shewed, where the Plea was in Trespass upon the Case, and all the Proceedings were Trespass, because it is not warranted by the Pleint, tho the Steward was present, and shewed his Book of Entry of Pleints that it was a Misprision, it might not be amended, but was reversed. *Cro. Jac. 542. Draycott and Heaton.*

It was a doubt in *Peachy and Fosters Case*, if a Man recover in inferior Court of Record, Debt, or Damages, and after remove the Record into the *Kings-Bench* by *Certiorari*, whether the Court of *Kings-Bench* be bound in this case to grant execution upon this Judgment. *1 Rol. Abridg. 887. Vide Postea.*

The Court where the Writ of Error is brought ought to give the same Judgment as the Judges of inferior Court ought to have done if they had not
erred ;

erred; as if the first Writ be abated by Judgment, if it be reversed in this Writ of Error, the Judgment shall be *quod Defendens respondeat*, there where the Writ of Error is brought, for so the inferior Court ought to have done; so if Judgment be upon an ill Writ, and Error brought, and the Writ abates, all shall be reversed: So where the Demandant is barred by Judgment, if in Error it shall be adjudged no bar, Judgment shall be, that the Demandant shall recover Seisin of the Land; for so the inferior Court ought to have done. 1 Rol. Abridg. 805.

In an Action on the Case for words, if a Verdict be given for the Plaintiff in an inferior Court, and after Judgment is given against the Plaintiff upon the Declaration *quod nil capiat per billam*, and after the Plaintiff brought a Writ of Error, where the said Judgment is reversed for an Error in the Entry of the Judgment (*viz.*) *concessum est for consideratum est quod Quer. nil capiat per billam*. If upon the Declaration and Proceedings the inferior Court ought to have given Judgment against the Plaintiff, if the Declaration be not good, the Court ought to give Judgment against the Plaintiff. 1 Rol. Abridg. 805. Delamore and Hoskins.

Judgment in inferior Court ought to be *Ideo consideratum est per Curiam*. In B. C. it is good, tho (*per Curiam*) be omitted. Sid. 143.

Cerciorari was directed to the Mayor and Jurats and Commonalty of *Winchelsea*, to remove orders by them made against the proprietors of Lands, *pro relevamine Coporationis*; they return that time out of Memory, there have been five antient Villages, *viz. Hastings, Dover, Sandwich, New-Romney, and Heibe* called *Cinque-Ports*, and that time out of Mind *Rie and Winchelsea* have been Members thereof, and that time out of Mind, *brevia Dom. Reg. &c. non currant nec currere debent seu consueverunt* *Cinque-Ports* to return *breve Dom. Reg. non curr. &c.* to remove Orders.

run nisi, only of matters touching the Person of the King, Felony, or Appeals; and this Return was adjudged insufficient; for this Court is to see that the Subjects are not to be injured in their Estates as well as in their Person, 2 *Cro. Brown's Case*, And by these Orders they impose Levies upon the Estates of Tenants, and if these should not be examinable they would be equal to the Parliament, and the Return was not positive, but under a *Cum*, &c. by way of recital of their Priviledges, the Return was quasht. 2 *Lev.* 86.

No prohibition after Judgment to an inferior Court.

Assumpsit in *Windsor Court* for Meat, Drink, &c. at *Maydenhead*, *infra Jurisdic't' Cur'* and upon *non Assumpsit*, Evidence given of the Meat, Drink and Promise, *apud Henly quæ est extra Jurisdictionem*, for which the Defendant offered to Demur upon the Evidence, but the Steward would not admit it, and upon this a Verdict and Judgment for the Plaintiff, and a Prohibition was prayed, but denied after Judgment given there. 2 *Lev.* 230. *Jackson and Neal*. Q. in this Case, for there is no other Remedy.

Error.

Error in Fact.

IN a Writ of Error upon a Judgment in an inferior Court; if the stile of the Court was *Curia tenta coram J. S. Seneschallo Curie, &c. a Tempore, &c.* An Error may be assigned that *J. S.* was not Steward at the time of the Court held, 8 *Car. 1. B. R. Hall and Nicholls*. This is Error in Fact.

But in such Case, if the Error be assigned that *J. S.* had not any Authority to hold Court, this is not well assigned; for this is uncertain, and matter in Law peradventure, and not matter in Fact to be tryed *per Pais*.

In Action upon the Case on a Promise in the Burrough Court of *Beudly* in the County of *Worc'*
if

if the Plaintiff declare there, that the Defendant at *Beudly* within the Jurisdiction of the Court, in consideration of 20 s. given to him by the Plaintiff, assumed to pay 5 l. to the Plaintiff, if he at any time after sold any woollen Cloth at any Fair held within the Burrough of *Walsall*, within the Jurisdiction of the said Courts, and avers, that the Defendant afterwards sold at a Fair held at *Walsall* aforesaid, within the Jurisdiction of the Court, woollen Cloth. The Defendant pleads, that he did not sell the said woollen Cloth at *Walsall* aforesaid, *modo & forma*, upon which Issue is taken, and this tried at *Beudly* by a *Venire Facias de Burgo de Beudley*, and a Verdict and Judgment there for the Plaintiff. The Defendant in a Writ of Error may assign for Error, that *Walshall est in Commitatu Staff'* and out of the Liberty of the said Burrough of *Beudly*; for it is matter of Fact. *M. 11 Car. 1. B. R.* adjudged in a Writ of Error, and *Lea and Ceeley*. The Defendant in the Writ of Error being awarded, made Default, which is in Law as much as if he had pleaded in *nullo est erratum*, which acknowledgeth the Fact assigned for Error to betrue.

If a Judgment be entred in an inferior Court held before the Steward, *ideo consideratum est per Seneschallum quod querens recuperet*, this is good; for this is all one as if it had been, *Ideo consideratum est per Curiam*, adjudged in a Writ of Error out of *Alcester*. Court, between *Streeth* and *Parker*. See *Mill* and *Mawey's* Case upon a Judgment in *Exeter*, which was, *Ideo consideratum est ad eandem Curiam per le Mayor and Burgesles* (which were the Judges) *quod quer' recuperet*, and doth not say *per Curiam*. But if it be *ideo consideratum est*, and saith not *per Curiam*, nor *per Seneschallum*, this is erroneous. 1 *Rol. Abridg.* 772. *Man* and *Ax*, and between *Cook* and *Lewis*, upon a Judgment in *Wenlock*.

If

If a Judgment be given in an inferior Court against *A.* and after another Judgment is given against *A.* his Pledg there, and *B.* upon this is taken in Execution upon the Judgment, and after the principal Judgment is reversed in a Writ of Error, a special Writ may be awarded to deliver him, for that by the Record it appeareth that he was Pledge. 1 *H.7.* 12. b.

Where Appearance lies.

If a Man be summoned to appear in an inferior Court, and the Defendant appeareth not, and notwithstanding the Plaintiff puts in his Declaration, and declares against him, and after the Defendant appears and after makes default, by which Judgment is given against him by Default, the Appearance hath aided the putting in the Declaration before Appearance; and so it is not erroneous. *Harris* and *Goodale* upon a Writ of Error on a Judgment in *Ipswich*, and the Judgment affirmed. But

And where not.

If in Trespas of Assault and Battery in an inferior Court, if there be a Plaint entred, and a Declaration before any Appearance of the Defendant, and after the Defendant appears without Process, and pleads to Issue, and this is found for the Plaintiff, and Judgment accordingly; this is erroneous, not aided by the Appearance or Pleading, in as much as there was a Declaration against no Person, the Defendant not then being in Court. 1 *Rob. Abridg.* 780. *Brown* and *Clagg*.

If Action be brought in inferior Court against *J. S.* if the Plaintiff declares against him in *Custodia* of the Sergeant and Minister of the Court, and it does not appear that the Sergeant had any Process or Precept to arrest him, and the Defendant appears and Demurs for this Cause upon the Declaration, and upon this Judgment is given against the Defendant, this is erroneous; for he upon Appearance pleads this matter. *Laws* and *Doddsworth* in a Writ of Error upon a Judgment in *York*, and the Judgment reversed accordingly. In

In Action of Debt in Inferior Court upon a Bill obligatory, if the Plea be entred before the Debt becomes due by the Bill, before the time of Payment, and the Defendant pleads to Issue, and this is found for the Plaintiff, and Judgment given accordingly, yet this is Error. *M. 11 Car. 1. B. R. Holden and Collet.* In a Writ of Error upon a Judgment in *Nottingham*.

If an Action of Dower by way of Plaint, and not Writ be brought in any Inferior Court, by the Custom of the Court, and the Plaintiff upon this recover by Judgment, this is erroneous; for that it is against the Statute of *Magna Charta* to sue by Plaint in a real Action. *1 Rol. Abridg. 793.*

In a Writ of Error upon a Judgment given in Inferior Court, if the stile of the Court be entred in this manner, *Coram J. S. Majore & les Burges- ses burgi præd' and saith not secundum consuetud' villæ præd'* this is erroneous; for it ought to appear to the Court where the Record is removed by Writ of Error, that they had power to hold Plea, either by Prescription or Letters Patents of the King. *Bowman and Hickson, 1 Rol. Abridg. 795.*

If the Plaintiff in an inferior Court be in *placito Transgressionis super casum*, and the Declaration is in *placito debiti*, and Judgment or Error given upon this for the Plaintiff, this is erroneous, and such Judgment given in *St. Albans Court* was reversed accordingly, *id. ibid.* If a Man declare in an Inferior Court in Action against *J. S. in custodia de J. S.* Sergeant and Minister of the Court; this is not good without an Averment, that he took him in his Custody by force of the Precept or Process of the Court, or such like. *Tr. 1649. Laws and Doddsworth.*

If the Judgment be given on *nihil dicit* in Inferior Court, held before the Steward by Letters Patents

Debt on a Bill before time of payment.

Stile of the Court.

Plaint and Declaration vary.

Writ of Enquiry.

tents within time of Memory, the Writ of Inquiry of Damages ought to be awarded returnable in the Court to be enquired there, unless it be specially otherwise declared by the Letters Patents, (*scil*) That the Bailiff of the Court or other Officer shall enquire, for otherwise the Bailiff should take an Oath upon Enquiry without express Authority. *Trin.* 14 *Car.* 1. *B. R. Wrotesly and Metcalf.* But it was agreed that the Sheriff may, for that he is an Officer known and sworn; and so in divers Inferior Courts the Serjeant or Bailiff may.

Bailiffs and Ministers of the Court.

Upon Not guilty pleaded to an Indictment of Barretry before the Justices of a Burrough-Vill, who had Power by Charter to hold a Sessions, a *Venire Facias* is awarded, and the Record is, *Et Juratores inde prædicti per A. & B. tunc Ballivos Burgi & Villæ prædictarum impannellati exacti quidam, eorum (videl.) &c. venerunt, &c.* and upon this a Verdict and Judgment. This is Erroneous; for that it may be that these Bailiffs were Bailiffs of the Village for other Purposes, as to collect their Rent, &c. and not Ministers of the Court; for it ought to be *per A. & B. Bailiffs and Ministers Cur' prædict'* 16 *Car.* 1. *Banister's Case.*

Venire,

If an Issue be joined in an Inferior Court, which had Power to hold Court from Week to Week, and the Court awards a *Venire Facias* returnable the same Court; and upon this a Jury is returned and Issue tried the same Court, this is erroneous. *Trin.* 14 *Car.* 1. *B. R. Morgan and Bodington.* And the Judgment was reversed.

Venire how to be awarded.

In Action in Inferiour Court, after Issue joined, Continuance is made *ad proximam Curiam tenendam* at such a day, &c. at which day *venerunt Partes prædict.* &c. *super quo* a *Venire Fac.* is awarded for a Jury, and it is not said that this was awarded by the Court, or *ad eandem Curiam*; although a Jury is returned upon it, and a Verdict and Judgment upon

upon it, yet it is erroneous: For it may be this was awarded out of Court, and so a void Tryal, *Tr.* 1649. *Viccars* and *Drake*, in a Writ of Error upon a Judgment in *Exeter*. But if the Record after Issue joined be *super quo ad istam eandem Curiam*, a *Venire Facias*, &c. and is awarded, it is good, *Tr.* 1649. *Peard* and *Harris* on Error of a Judgment in *Barnstable*.

In an Inferior Court if the Parties are at Issue, and upon this Process is awarded to the Serjeant at Mace (not naming his name) & *Minister Cur' prædict' quod secundum Consuetudinem Venire Fac'* a Jury, &c. and at the day of the Return, *ad quem diem præfat' serviens ad Clavam & Minister Cur' prædict'* (without naming his Name) *misi Præceptum suum prædict' ei in forma prædicta direct'* in *omnibus exercit'* & *retornat'* &c. this is a good Return of the Jury and Award of Process; for the naming him is not necessary, for it appears that the Officer did it, *Tr.* 14 *Car. B. R. Bellamy* and *Davies*.

Naming the Serjeants at Mace not necessary.

In an Action in the Court of *Norwich* the Parties were at Issue, and this is entred upon the Record, *Ideo præcept' fuit J. S. servienti ad clavam quod venire faciat hic ad proximam Curiam*, such a day, *tenend'* &c. *duodecim*, &c. *per quos*, &c. *qui nec*, &c. and at the Day the Serjeant returns his Precept so to him directed, *una cum quodam pannello de nominibus Juratorum in omnibus servitum & executum prout ei præceptum fuit*. And upon this the Jury appears and tries the Issue for the Plaintiff; this is not good, for it doth not appear from what place the *Venue* comes; for although it be the course of the Common Pleas or King's Bench, who have general Jurisdiction so to do, yet Inferior Courts which have a limited Jurisdiction, ought not so to do. For no Writ of *Diminution* or *Certiorari* lies to certify the *Venire Fac.* to such Inferior Courts; and

It must appear from what place the *Venue* comes.

and because if it be not shewed in the Record from what Place it was awarded, it may be misawarded, and there shall not be any means to reverse it; therefore it is erroneous. *Cawdwell and Nunn*, in Error upon a Judgment in *Norwich, Mich. 9 Car. B. R.*

Venire de Burgo

If upon an Issue in a Burrough-Court, a *Venire Facias* is awarded *de Burgo*, and saith not, *Infra Jurisdictionem Cur'* yet it is good, for it shall be intended to be all one. *Noble and Tonney, 9 Car. 1. Mich. B. R.*

In an Inferior Court upon Issue joined, if a *Venire Facias* be awarded to the Officer to return 24 Jurors, it is not good. But if the *Venire Facias* be to return 12, and in the same Precept it is commanded *habere corpora 24* to trye the Issue; and upon this 24 are returned, and the Issue tryed by 12, it is good. *Mich. 14 Car. 1. B. R. Erneley and Sage.*

Stat. 27 Eliz. 6.
extends only to
the Courts at
Westminster.

If a *Venire Facias* in an Inferior Court held by Charter be *quorum quilibet habeat 4 l. terrarum tenementorum vel reddituum*, this is erroneous. For *Stat. 27 Eliz. c. 6.* extends only to the Courts at *Westminster*, and not to Inferior Courts. And as to that, the Law of Inferior Courts is as it was before the Statute: And a Judgment in the *Marshalsea* was reversed for this Cause. And it may be, that there are not Jurors sufficient within the Jurisdiction which have *4 l. per An.* and then there would be a failure of Justice, and they have not Power in Inferior Courts to alter the Form of such Writs.

At a Court held in the City of *York* before *A.* and *B.* Sheriffs of the said City; if the Plaintiff declare of a Trespass for taking certain Goods *apud Civitatem Eborum ac infra Jurisdictionem Curiae*, and on Not Guilty pleaded, a *Venire Fac'* is awarded to the Serjeants of the Mace in the City, and Ministers of the Court to return 12 *Probos, &c. de Balliva*

Balliva dictorum Vicecomitum, and they return a Jury accordingly, this is not a good award of a *Venire*; for that it may be that the Bailiwick of the Sheriffs extends beyond the City, as is usual in divers Cities, and the use of awarding a *Venire* is *de Vicineto Civitatis*, or *de Civitate*, and not *de Balliva*. Mich. 22 Car. 1. B. R. and the first Judgment was reversed for this Error.

If a Writ of Error be directed to the Mayor, Aldermen, and Recorder of *Launceston* in the County of *Cornwall*, and the Record is certified by the Mayor, Aldermen and Deputy-Recorder, the Court being held by Letters Patents, this is not well certified, forasmuch as this ought to be certified in the Name of the Judges of the Court; and it doth not appear that the Recorder had Power to make a Deputy by the Letters Patents, H. 1647. *Spry* and *Mill*. and the Writ abated.

If an Action be brought in an inferior Court against J. S. if the Plaintiff declare against him in Custody of the Serjeant and Minister of the Court, and it appears not that the Serjeant had any Process or Precept to arrest him, and the Defendant appears, and for this Cause demurs upon the Declaration; and upon this Judgment is given against the Defendant, The Judgment is erroneous, for he upon Appearance pleads this Matter. *Law* and *Dodsworth*, in a Writ of Error of a Judgment in *York*.

Action on the Case. The Plaintiff in a Court of Pie-Powders held at *Gloucester*, *secundum Consuetudinem Civitatis illius*, brought Debt against H. who was in the Custody of the Sheriffs and they suffered him to escape. It was moved, That the Action lies not, because it is not alledged that the Court is there held at *Gloucester* by Custom or Charter, and then it is clear they hold Court without Authority, and so the Defendant's not charge-

De Vicineto Civitatis, and not *de Balliva*.

The Record to be certified in the Names of the Judges of the Court.

Recovery in Inferior Courts how to be pleaded.

Stewards in Inferior Courts how to make their Certificate.

Stile.

Court by Letters Patents.

able. 2. In pleading a Recovery in an Inferior Court it ought to be shewed by what Authority the Court is held, whether by Patent or Prescription, and the Sheriff who is to take Advantage thereby (he being an Officer of the Court and arresting the Party) ought to shew it; as Stewards when they make any Certificate out of Inferior Courts ought to shew therein how the Courts are holden, for they best know their own Authority, and the Omission thereof is just Cause to reverse and annul all their Proceedings. Otherwise in the case of a Stranger, as here where the Stile of the Court is but an Inducement to the Action, and these Words, *secundum Consuetudinem Cur'* will help it. *Cro. Car.* 45, 46. *Hodges versus Moyse.*

Error of a Judgment in *Sudbury*. The Error assigned was, That the Court is held by Virtue of Letters Patents of Queen *Mary*, and the Process is awarded *secundum Consuetudinem Cur'* which cannot be by Custom, where the Court is erected within time of Memory. *Cro. Car.* 143. *Long and Neathercoat.*

Error to reverse a Judgment in the Court of *N. I.* The Judgment is entred to be before the Mayor and *J. S. & J. D. Aldermannis*, and at the same time the Plaintiff was made Mayor pending the Suit, *sed non alloc.* unless the Party had excepted to it in the Court and it was disallowed there, then it had been Error; but if he admits him to be his own Judge then it is not Error. 2 *H.* 4.4. 2. The Prescription is to hold Courts before the Mayor and two Aldermen; and it is alledged, that at such a Court held before the Mayor and *J. S.* and *J. D.* Aldermen, &c. and alledgeth in Fact, That *J. S.* was not then Alderman. The Defendant pleaded *in nullo est Erratum. Per Cur'* it is a manifest Error; for there must be two Aldermen, and if *J. S.* was
not

not Alderman, there were not two Aldermen. *Cro. Eliz.* 320. *Wash and Collinger.*

Writ of Error was brought upon a Judgment given in *Leicester* in Debt: It was assign'd for Error, because in that Suit there was not any Plaint; for in all Inferior Courts the Plaint is as the Original at the Common Law, and without that no Process can issue: and here, upon this Record, nothing is enter'd but only that the Defendant *summonitus fuit, &c.* and the first Entry ought to be, *A. B. queritur versus C. &c.* *Per Cur'* a Plaint ought to be enter'd before Process issueth forth; and this Summons which is entred here is not any Plaint. And Judgment was reversed. *1 Leon.* 302. *Savage and Knight's Case.*

Error was brought upon a Judgment given in *Lynn*; where by the Record it appeareth, that they prescribe to hold Plea every *Wednesday*: and it appeared upon the said Record that the Court was holden *16 Febr. 26. Eliz.* which was *Dies Dominicus*, and that was not assigned for Error in the Record, but after *in nullo est Errat'* pleaded, it was assigned at the Bar, and Almanacks were shewed to the Court in Proof of it, and it was clearly held to be Error: But the Doubt was, if it should be tried by the Jury or by the Almanacks? And the Justices may judicially take Notice of Almanacks, and the Judgment was reversed. *1 Leon.* 242. *Paye and Fawcett.*

Plaint to be enter'd before Process sued out.

Tryal by Almanacks.

E R R O R.

REC mandabit Vicecomitibus Civitatis Norwici breve suū Clm in hec Verba, Carolus Dei Gra Angl Scoꝝ Franc & Hiberni Rex fidei Defensor &c. Vicecomitibus Civitatis Norwici salutem quia in Recoꝝd & ꝑꝛeꝛs ac etiam in reddiꝝone judicii loquele que fuit coram vobis in Curia nostra Civitatis ꝑdice sine brevi nostro secunduꝝ Consuetudinꝝ ejus Civitatis inter Henricuꝝ Marke Execꝝ Testamenti Anne Fairman Vidue nupꝑ Execꝝ Testamenti Will fairman & Clementꝝ Cubitt de Dilham in Comꝝ Norfꝝ Genꝝ de eo quod idem Clementꝝ redderet ꝑfacꝝ Executoꝝi centuꝝ & quadragine libꝝ ut dicitur erroꝝ intervenit manifestus ad grave dampnuꝝ ipsius Clementis sicut ex querela sua accepimus Nos Erroꝝem si quis fuit modo debetꝝ corꝛigi & partibus ꝑdice plenam & celerem justitiam fieri volentes in hac parte vobis Mandamus quod si judicium inde reddiꝝ sit tunc recoꝝduꝝ & ꝑꝛeꝛs loquele ꝑdice cum omnibus ea tangenꝝ nobis sub Sigillo vestro distincte & aperte mittatis & hoc breve ita quod ea habeamus a die Sancti Michaelis in tres septimanꝝ ubicunꝝ tunc fuerimus in Anglꝝ ut inspectꝝ recoꝝdꝝ ac ꝑꝛeꝛs ꝑdice ulterius inde ꝑ Erroꝝe illo corꝛigenꝝ fieri faciamus quod de jure & secunduꝝ legem & consuetudꝝ Regni nostri Anglꝝ fuit faciendꝝ Teste me ipso apud Westmꝝ sexto die Junii Anno Regni nostri decimo nono,

A D D E R L E Y.

Execu-

Executio istius brevis patet in quadam
Schedula huic brevi annex' Johān Green-
wood & Johān Hayley Dic istud breve sic
indorsae & retorn per supranominat nup Dic
in exitu ab Officio suo nobis subnominat
modo Dic deliberat fuit Thomas Cost &
Ric Bateman Dic.

Placita apud Civitatē Norwici in Con-
eiusdem Civitatē in Cur Dom Reg' Guilhald
Civitatē Norwici tene apud Norwici pdice
in Guildhall ibidem coram Johān Green-
wood & Johān Hayley Uic Civitatē pdice
secundum Usū & Consuetudē Civitatē illius
a tempore cuius contrarii memoria hominū
non existit in eadem Usitatē & approbat ac
Libertatē Privilegiū & Franchesiā civibus dicte
Civitatis p diversos nup Regis Angl con-
cessū & p dictum Regem nunc confirmū die
Mercurii videl vicesimo secundo die Martii
Anno Regni Dom nostri Car Dei Gra Angl
Scot Franc & Hibern Regis Fidei Defens
&c. decimo octavo ad hanc Cur venit Henric
Marke Exec Testamene & ule volune Anne
Fairman Vid defuncte Executricis Testa-
menti & ultime voluntatē Willielmi Fairman
defuncte in ppria Persona sua & queritur
versus Clemene Cubitt de Dilham in Com
Norf Gen de placito quod reddat ei centū
& quadraginta Libras quas ei injuste detin
&c. Et invenit pleg de pleguē querel suā
pdice videl Johān Doe & Ric Roe & petit
pcesū inde sibi fieri versus pfar Clem Cubitt
de plito pdict secundum Consuetudinē Ci-
vitatē pdice sup quo ad hanc Curiam secun-
dum Usū & Consuetudē ac Libertatē Privi-
legiū & Franchesiā Civibus dicte Civitatē con-
cessū & toto tempore supradicto in eadem usi-
tatē & approbat pcept est Samuel Norman

und Serbien ad Clavam vice Die in Com
 pdict ac Ministi Cur pdice quod sum p ho-
 nos sum pdict Clement Cubitt quod sit ad
 pr' Cur Dom Regis Guihald Civitae pdice
 die Mercurii videl duodecimo die Aprilis
 pr' futuro in Guihald pdice tenend &c. ad re-
 spondend pfae Henrico Marke de pto pdice
 Et idem dies dat est pfae Henrico Marke
 hic, &c. Ad quamquidem Cur dicti Dom
 Regis Guihald Civitatis pdict dicto die
 Mercurii videl duodecimo die Aprilis in
 Guihald pdice coram pfae Die Civitatis
 pdice hic tent &c. Ven &c. pdice Henricus
 Marke in ppria plona sua & optulit se versa
 pfae Clementem Cubitt de pto pdice Et ipse
 non Ven &c. Et pdice Samuel Nozman
 Serbien ad Clavam &c. modo hic Testae
 & retorn quod pdict Clemens Cubitt nihil
 habet infra Libertae Civitae Nozwici per
 quod Sum potest nec est invene in eadem
 ideo ad eandem Cur dicti Dom Regis Gui-
 hald in Civie po dicto die Mercuri videl xii.
 die Aprilis tene apud Nozwic po in Guihald
 ibid coram pfae Die Civie po secundum Alsum &
 Consuetudin ac Libertae Privileg a fran-
 chels pdice pcess est pfae Samuel Nozman
 Serbien ad Clavam &c. quod cap' pdice
 Clement Cubitt si &c. & eum Solvo &c. Ita
 quod habeat corpus ejus hic ad pr' Cur
 Dom Regis Guihald Civitae pdice die Sab-
 bati videl decimo quinto die Aprilis pr'
 futur' in Guihald pdice tenend ac ad respond
 pfae Henrico Marke de pto pdice idemque
 dies dat est pfae Henrico Marke hic &c. Et
 sup hoc idem Henricus Marke posuit loco
 suo Petr' Thacker Attoz sum versus
 pfae Clementem Cubitt de plito pdice ad
 quamquidem Cur dicti Dom Regis Guihald
 Civitatis

Civitatis p̄dice dicto die Sabbati videl decimo quinto die Aprilis coram p̄fate Vic hic tene &c. ven̄ p̄dice Henricus Marke p̄ Retor̄m suū p̄dice & optulit se versus p̄fate Clemente Cubitt de p̄lito p̄dict Et p̄dictus Sam Norman Servien ad Clavam &c. modo hic testatur & retor̄m quod ipse virtute p̄cepte p̄ sibi in forma p̄dict direce cepit p̄dict Clementem Cubitt cujus quidem corpus modo hic paratū habet ad responden̄ p̄fate Henr Marke de p̄lito p̄dice put ei p̄cepte fuit super quo ad eandem Cur' dicit Dom̄ Regis Guihald Civitat p̄dice dicto die Sabbati videl decimo quinto die Aprilis coram p̄fate Vic Civitae p̄dice secundum Usū & Consuetudinem ac Libertatem Privileg & Franchels p̄dice tene &c. idem Clemens Cubitt invenit p̄fate Vic Manucapē & p̄leg ad stand' recte in eadem Cur' hic in p̄lito p̄dice videl Georgiū Tobey & Johān Bzend Cives Civitae p̄dict qui presentes hic in eadem Cur' in p̄p̄iis p̄sonis suis coram p̄fate Vic Existit ad requisitionem p̄dice Clementis Cubitt secundum Usū & Consuetudinem Civitae p̄dict a toto tempore supradicto in eadem usitat & approbat debener' manucaptor' & p̄leg p̄ p̄dict Clementi Cubitt quod idem Clemens Cubitt stare recte in eadem Cur' hic in p̄lito p̄dict secundū Consuetudinem Civitatis p̄dict a toto tempore supradicto in eadem usitat & approbat Que quidem Consuetudo talis est quod defendē in qualibet querel in Cur' Dom̄ Regis Guihald Civitat Norwici affirm & p̄cess sup querel ill capē antequam ad eandem Cur' incedat invenire debet Vic ejusdem Civitat manucapē & p̄leg ad stand' recte in eadem Cur' hic in p̄lito illo videl quod ipse idem defendē compareat de die in diem ad quamlibet

bet Cur' Dom Regis Guihald Civitat pze-
dict coram pſat Vic Civitat pdict tenens
quoulg idem plitum terminetur ſive judic
inde reddatur Et quod ſtabit judicium verſ
huiusmodi defend' in eodem plito reſpond Et
quod ſubeat & ſe reddat Execut ejusdem ju-
dicii ſi conting' judic verſus huiusmodi de-
fend' in eodem plito reddi Et ſi huiusmodi
defend' ſe elong & in Execut judic ill ſe non
reddat ſed ab eadem ſe retrahet abſent ſeu
elong quod tunc huiusmodi manucapt & pleg
Execution huiusmodi Judicii ſubire debeant
ſibi & deſco modo quam ipſe idem defend'
Execution huiusmodi judicii ſubire deberet
ſi ab eadem non abſent ſeu elong Et ſup hoc
pdict Clemens Cubitt p manucapt & pleg
pdict dimittitur ad balliv &c. Ne idem
Clemens Cubitt poſuit loco ſuo Johad Wiſe-
man Attorn ſuum verſus pſat Henr' Marke
de plito pdict plita apud Civitat Norwici
in Com ejusdem Civitat in Cur' Dom Re-
gis Guihald in Civitat Norwici tenet apud
Norwicum pdict in Guihald ibidem coram
pſat Johe Greenwood & Johe Hayley Vic
Civitae pdict ſecundum uſum & conſuetud'
Civitae illius a tempore cujus contrarii me-
moriz hominu non exiſtit in eadem uſitae &
approbat ac libertat Privileg & franchiſſ
Civibus dicte Civitae p diverſos nup Reges
Angl conceſſ & p Dom Regem nunc confirm
dicto die Sabbati videl decimo quinto die
Aprilis Anno regni Dom Regis Caroli
nunc Angl &c. decimo nono ſcil Clemens
Cubitt de D. in Com. Norf' Gen ſum fuit
ad reſpondend' Henrico Marke Executoz
Teſtamenti & ultime Voluntat Anne Fair-
man Vid' deſunct Executriz Teſtamenti
Willielmi

Willielmi Fairman defuncti de p[re]sente quod reddat ei centum & quadraginta libras quas ei iniuste detinet &c. Et unde idem Henricus p[er] Petrum Thacker Attor[um] suu[m] dicit quod cum vicesimo quarto die Junij An[no] Dom[ini] nostri Car[oli] Dei Gra[ti]e Regis Angl[ie] &c. decimo sexto Anno[rum] Dom[ini] millimo sexcentesimo quadragesimo p[re]dictus Clemens hic apud Porwicum in Parochia Sancti Petri in Warda de Mancrofte & infra Jurisdictione[m] hujus cur[ie] p[er] quoddam scriptu[m] suu[m] obligato[rum] concessisset se teneri p[re]fate Willielmo Fairman in vita sua in p[re]dicto centu[m] & quadraginta libris Solvend[um] eidem Willielmo cum inde requisisset p[re]dicta tamen Clemens licet sepius requisisset p[re]dicto centu[m] & quadraginta libras p[re]fate Willielmo in vita sua seu p[re]fate Anne in vita sua post mortem p[re]dicti Willielmi seu eis Henrico post mortem p[re]dictae Anne nondu[m] reddidit sed illi eis reddere contradixit ac iniuste detinet unde idem Henricus dicit quod deteriorat[ur] est & dampnu[m] habet ad valent[em] quadraginta libraru[m] Et inde p[re]duc[itur] sectam &c. Et p[re]fert hic in cur[ia] tam Scriptu[m] p[re]dictae quod debitu[m] p[re]dictae in forma p[re]dictae testatur cujus dat[um] est die & anno supradictis &c. quam literas Testamenti p[re]dicti Willielmi p[er] quas satis liquet cur[ia] hic p[re]dictae Annam fuisse Executricem Testamenti p[re]dicti Willielmi ac inde habuisse administrationem &c. quamque literas Testamenti p[re]dictae Anne p[er] quas satis liquet Cur[ia] hic ipsu[m] Henricu[m] fore Executor[em] Testi ejusdem Anne & inde habere Administrationem &c. Et p[re]dicti defend[unt] p[er] Attor[um] suu[m] p[re]dicti ben[edicti] & defend[unt] vim & injuri[am] quando &c. & petit licentiam inde interloquend[um] hic usq[ue] ad p[ar]te[m] cur[ie] Dom[ini] Regis Guichard Civitatis p[re]dictae die

Mer-

Mercurii decimo nono die Aprilis pr' futuri
tenend' &c. Et ei conceditur &c. Idemq; dies
dat est p'fat quer' hic &c. Ad quem diem hic
venit tam p'dict quer' quam p'dice defend' per
Attorn' suos p'dict Et p'dict defend' p At-
torn' suu p'dice per ulterioz' licent' inde inter-
loquend' hic usq; ad pr' cur' Dom' Regis
Guihald Civitat' p'dict die Sabbati videl
vicesimo secundo die Aprilis pr' futur' te-
nend' &c. Et ei conceditur, &c. Idemq; dies
dat est p'fat quer' hic &c. Ad quem diem hic
venit tam p'dict &c. quam p'dict defend' p At-
torn' suos p'dict Et p'dict Defend' p Attorn'
suu p'dict p ult' licent' interloquend' hic usq;
ad pr' Cur' Dom' Regis Guihald Civitat'
p'dict die Mercurii videl vicesimo sexto die
Aprilis pr' futur' tenend' &c. Et ei conce-
ditur, &c. Idemq; dies dat est p'fat quer'
hic &c. Ad quem diem hic venit tam p'dict
quer' quam p'dict defend' p Attorn' suos pre-
dict Et p'dict Clemens Cubitt adtunc &
ibidem ptulit & deliberabit p'fat Die Civitat'
p'dict quoddam breve Dom' Regis de habeas
Corpus e Cur' Dom' Regis de Communi
Banco emanand' eisdem Die direct' ac eis pre-
cipiend' quod corpus Clement' Cubitt p dict
Die capt' & in Prisona dicti Dom' Regis sub
custod' dict' Die ut dicitur detent' sub salvo
& secur' conductu una cum die & causa ca-
ptionis & detentionis ipsius Clementis Cu-
bitt quocumq; nomine idem Clemens censu
in eadem haberent coram Justic' dicti Dom'
Regis apud Westm' die Lune pr' post Cra-
stinum Ascensionis Dom' tunc pr' sequend'
una cum dicto brevi Quod quidem breve
iisdem Die receperunt & allocaverunt ideo
ult' p'cess' in dicta Cur' de plito p'dict cess'
quot

quoscunq; &c. Ac supinde postea scilicet ad Cur' dicti Domini Regis Guihaldi Civitatis predictae die Mercurii videlicet decimo quarto die Junii tunc prae sequendi coram prefato Vice Civitatis predictae tenebatur &c. veniens tam predicta Querens quam predicta defendens per Attorones suos predicta defendens per Attorones suos predicta. Et predicta Querens praesentavit & deliberabit prefato Vice civitatis predictae in Curia predicta Quoddam breve Dni Regis de procedendi vice Norwici directe predicta Curia Dni Regis de Communi Banco predictae emanant per quod quidem breve eisdem Vice mandatum fuit quod in quibuscunque plitis & querelis versus ipsum Clementem in Curia predicta coram eisdem Vice motive pendens secundum legem & Consuetudinem Regni deo Dni Regis Angli procedat cum effectu aliquo brevi eisdem Vice Norwici nuper directe in aliquo non obstante super quo ad eandem Curiam dicebat Dni Regis Guihaldi Civitatis praesentis dicto die Mercurii videlicet decimo quarto die Junii coram prefato Vice hic tenebatur &c. predictae defendens per Attorones suos predictae veniens & Petens ultimum licentiam inde interloquendi hic usque ad proximam Curiam Dni Regis Guihaldi Civitatis predictae die Sabbati videlicet decimo septimo die Junii proxima futuri tenebatur &c. Et ei conceditur &c. Idemque dies datus est prefato querenti hinc &c. placita apud Civitatem in Curia Dni Regis Guihaldi Civitatis Norwici tenebatur apud Norwicum predictae in Guihald ibidem coram prefato Johanne Greenwood & Johanne Rayley Vice Civitatis predictae secundum consuetudinem Civitatis illius a tempore cujus contrarii memoria hominum non existit in eadem Assuetudine & approbat ac libertatis privilegium & Fran-

Franchels Civibus dict' Civitat' p diver-
 los nuper Reges Angl concess' & p Dom
 Regem nunc confirm' dicto die Sabbati vi-
 dele decimo septimo die Junii Anno Regni
 Dni Regis Caroli nunc Angl &c. Decimo
 nono supradicto Clem' Cubitt de D. in
 Com' Norfolk gen' sum fuit ad Respondend'
 Henrico Marke Executori Testamenti & ul-
 time voluntatis Anne Fairman Vid' defunct'
 Executrici Testamenti Willi Fairman de-
 funct' de placito quod reddat ei centum & qua-
 draginta libras quas ei injuste detinet &c.
 Et unde idem Henricus per Petrum Thack-
 er Attoznm suu dicit quod cum vicesimo
 quarto die Junii Anno Regni Domini secun-
 do Caroli Dei Gra Regis Angl &c. decimo
 sexto Annoq; Dni Willielmi sexagesimo,
 Quadragesimo p'deus Clemens hic apud
 Norwiche in Parochia Sanct' Petri in Warda
 de Monerofte & infra Jurisdiction' ejus Cur'
 per quoddam scriptum suu obligatoziu con-
 cessisset se teneri p'fat Willielmo Fairman in
 vita sua in p'dice centum & Quadragesima li-
 br' solvendum eidem Willielmo cum in-
 de requisitus fuisset p'dice tamen Clemens li-
 cet sepius requisitus p'dice centu & Quadragin-
 ta libras p'fat Willielmo in vita sua cen-
 p'fat Anne in vita sua post mortem p'dice
 Willielmi secund' eidem Henrico post mortem
 p'dice Anne nondum reddidit sed ill' eis red-
 dere contradixit ac injuste detinet unde i-
 dem Henricus dicit quod deteriorat' est ad
 dampnu habet ad valene Quadragine li-
 brarum & inde p'ducit sextam &c. Et p'fert
 hic in Cur' tam scripe p'edice quod debitum
 p'ed in forma p'ed testatur cujus dat' est die
 & Anno supradictis &c. quam literas Testa-
 mene

mense p̄dicte Willielmi quas satis liquet
 Cur' hic p̄dicta Anna fuisse Executricem Te-
 stamenti p̄dicte Willielmi ac inde habuisse
 administracionem &c. quamq̄ literas Testa-
 menti p̄dictæ Anne p̄ quas satis liquet Cur'
 hic ipsum Henricum fore Executor Testamen-
 ti ejusdem Anne & inde habere Administra-
 conem &c. Et p̄dicte defend' per Johannem
 Wiseman Attoꝝ suum veni & defend' vim
 & injuri quando &c. Et p̄e audit' scripte ob-
 ligatoꝝii p̄dicte & ei legitur &c. petit etiam
 audit' Conditionis ejusdem scripte & ei Legi-
 tur in hæc verba. The Condition of this Ob-
 ligation is for the true and sure payment of seventy
 five Pounds and twelve Shillings, of good and law-
 ful Money of *England*, to be paid into the above-
 named *William Fairman*, or to his certain Attorney,
 his Heirs, Executors, Administrators, or Assigns,
 at or upon the four and twentieth day of *June* next
 ensuing after the date hereof, in, or at the now
 Mansion or Dwelling-House of *Will. Fairman* in
Dilham aforesaid, to be paid, That then this pre-
 sent Obligation to be void, and of none effect, o-
 therwise to remain in full force and vertue. Qui-
 bus lectis & audit' idem defend' dicit quod ipse
 non potest dedicere quin scripte obligatoꝝ
 p̄dicte sit factum suu tamen p̄e quod inqui-
 ratur de vero debitu in Conditione ejusdem
 scripti specificat' secundum Usu & consue-
 tud Civitatis *Notwici* a tempore cujus con-
 trarii memoria hominum non existit in ea-
 dem usitatæ & approbatæ per patriam. Et
 p̄dicte quer' similiter Ideo p̄ceptu est *Samuel*
Notman serviedu ad clavam &c. quod secun-
 dum consuetud' dicte Civitatis a toto tempo-
 re supradicto in eadem usitatæ & approbatæ ve-
 nit' fac' hic ad proximam Cur' Dñd Regis
 Guibald

Guithald Civitae p̄dict die Mercurii videlicet
 vicesimo die Junii p̄xor' futur' tenend' &c. Du-
 odecim probos & legales homines de Vilā
 Paroch' Sanct' Petri p̄dicte per quos rei
 veritas melius scir' poterit & qui nec p̄dicte
 quer' nec p̄fat' defend' aliqua affinit' atting'
 ad recogd' super sacrum suum inter partes
 p̄dictas de placito p̄dicte quia tam p̄dicte
 quer' quam p̄dicte defend' inter quos inde
 concencio est poner' se in iur' patrie idem-
 que dies dāe est partibus p̄dicte hic &c.
 Ad quem quidem diem hic vic venit tam
 p̄dict' quer' quam p̄dict' defend' per Attornd
 suos p̄dicte & p̄dicte Samuel Norman ser-
 vien' ad clavam &c. secundum Consuetud
 dicte Civitat' modo hic testatur & retornd pre-
 cepe suū p̄dicte directē una cum quodam pan-
 nell de nominibus Iur' in omnibus servit &
 Execut' prout ei precepe fuit & Iur' sic inde
 impannell nulluseorum ven' Postea continu-
 ato process' inter partes p̄dicte in Cur' p̄dicte
 de placito p̄dicte per Iur' inde inter eas posit' in
 respere pro defecte Iur' secundo Consuetud
 dicte Civitatis hic usq; ad Cur' Dñd Regis
 Guithald Civitae p̄dicte die Mercurii videlicet
 Decimo nono die Julii tunc p̄xor' sequend'
 hic tene &c. usq; quam quidem Cur' partes
 p̄dicte habuer' diem hic in placito illo ad
 quem diem hic ven' tam p̄dict' Quer' quam
 p̄dicte Defend' per Attornd suos p̄dicte Et Iur'
 sic inde impanellae videlicet Henr' Oldham,
 Joseph Seman, Firman Rockwood, Jo-
 hannes Clubb, Edwardus Tpler, Utelet
 Benton, Nicholas Ellpet, Thomas Seamer-
 ner, Thomas Cawston, Edwardus Harding,
 Christoph' Hatton, & Willielmus Weston,
 exace similiter ven' qui ad veritatem in p̄miss'
 dicend'

dicens elect' trias & jurat' dicunt super sacrum suum quod pzed' defend' detid' a p'fat' Quer' p'dice Septuagine quinq' libras & duodecim solid' in dicta Condicione pzed' scripti obligatozii superius specificat' modo & forma put in eadem Condicione ejusdem scripti superius mentonae Et assident dampna ipsius quer' occasione detencionis debiti illius ule mis' & custag' sua p ipsum circa sece suam in hac parte appositae ad sex libras & pro mis' & custag' suis ad duos solid' ideo cons' est p Cur' hic quod p'dice quer' secundum consuetud' dicte Civitatis recuperet versus dictum Defend' debitum suum pzedictum septuagine quinq' librarum & duodecim solid' ac dampna sua p'dice sex librarum & duorum solid' per Jur' pzed' in forma pzed' assess' nec non trigin' sex' solid' & sex denar' eidem quer' ad requisiconem suam pro mis' & custag' suis per ipsum circa sece suam in hac parte appositae per Cur' hic de incremento adjudicat' &c.

Et pzed' Defend' in cons' &c. super quo pzedict' Clemens Cubitt postea scilicet vicesimo die Julii prox' sequen' protulit & deliberabit p'fat' Johanni Greenwood & Johanni Hayley Vic' Civitatis pzedict' quoddam b'rebe Dni Regis de Erroze Corrigend' eidem Vic' direct' cujus quidem b'revis inscript' est huic Record' consue quod quidem b'rebe iidem Vic' receperunt & allocaverunt ideo Alterius process' in dict' Cur' de Executione judicii pzed' cessat' quousq' &c.

*The Titles of most of the Corporations in
England.*

A.

- Abendon.* **M**ajori & Ballivis Villæ de *Abendon*, & eorum cuilibet.
- Abington.* Majori Ballivis & Burgensibus Burgi sui de *Abington*, & eorum cuilibet salutem.
- Abergavenny.* Seneschallo & Ballivis *Henrici Nevel* Mil. Dom. *Abergavenny*, Villæ suæ de *Abergavenny*.
- Adven.* Majori & Ballivis Villæ nostræ de *Adven.* & eorum cuilibet.
- Cur' Admiral.* J. P. Supremæ Cur' Admiralitatis *Angliæ* ejusve Deputat' Legitimo ibidem.
- St. Alban.* Præclarissimo suæ ejusdem locum Tenenti, aut Deputat. Seneschallo Cur' nostræ de Record. Tent. infra Burgum S. *Albani* in Com. *Hertsf.*
- Aliter.* Seneschallo Cur' de Record. Burgi nostri St. *Albani* in Com' *Hertsf.*
- Aldborough.* Ballivis Villæ de *Aldborough* salutem.
- Aldburges.* Seneschallo Manerii nostri de *Aldburges* de Com' *Ebor.* salutem.
- Alesbury.* Ballivis Villæ suæ de *Alesbury* in Com' *Buck.* salutem.
- Andover.* Ballivis & Burgensibus Burgi sui de *Andover*, in Com' *Southampt.* salutem.
- Alcester.* Seneschallo Com' *Brook*, Cur' suæ de Recordo apud *Alcester* in Com' *Warwick*, tenen. vel ejus Deputat. salutem.
- Appelby.* Majori Burgi sui de *Appelby* in Com' *Westm'* salutem.
- Arundel.* Majori & Burgensibus Burgi sui de *Arundel* in Com. *Suffex* salutem.
- Avendon.* Majori & Ballivis Villæ nostræ de *Avendon* in Com.;

B.

Banbury.

MAjori aut ejus deputat. uno Aldermanno, Recordatorio vel ejus deputat. duobus capitalibus Burgenſibus burgi de *Banbury*, in Com' *Oxon.* vel tribus eorum ſalutem.

Barnſtapple.

Majori Aldermannis & Burgenſibus burgi ſive Villæ de *Barnſtapple* alias *Barſtapple*.

Barwick.

Majori Villæ *Barwick* ſuper *Twedam*.

Baſingſtoke.

Ballivis & Senefcallo villæ de *Baſingſtoke* in Com' *Southampt.* & eorum cuilibet ſalutem.

Bath.

Majori Recordatori Aldermannis & Juſtic. civitat. noſtræ de *Bathon.* in Com. *Somerſet*, & eorum cuilibet.

Aliter.

Majori Juſtic. & Recordatori Civitat. *Bathon.* ſalutem.

*Bathon. Epif-
copo.*

Senefcallo ſive Ballivo Cur' ſuæ de placitis ad Reverendum in Chriſto Patrem Dom' N. permiſſione divina *Bathon'* & *Wellen'* Episcopus pertinen. ſive conceſſ. tent' apud *Guild-hall* infra burgum & villam noſtram de *Welles* in com' *Somerſet* ſalutem.

Battle.

Senefcallo & Ballivis *A. Brown*, Milit' Dom. Vicecomit' *Montague* libertat. ſuæ de *Battel* in com. *Suffex*.

Bedford.

Majori Aldermannis Burgenſibus & Recordatori burgi ſive villæ de *Bedford*.

Bedwyn magn.

Portgreeve, Ballivo & Burgenſibus burgi ſui de *Bedwyn* in com.

Berealſton.

Majori & Burgenſibus burgi ſui de *Berealſton* in com. *Devon.* ſalutem.

Beverley.

Majori & Gubernatoribus Villæ noſtræ de *Beverley* & eorum cuilibet.

Beverlacy.

Majori Recordatori & Gubernatoribus villæ *Beverlacy*.

Bewdly.

Ballivo & Burgenſibus burgi noſtri de *Bewdly* in com. *Wigorn*.

The Law of Corporations.

Ballivo & Burgenſibus burgi ſui de *Bewdly* in com' *Salcp.*

Bidyford.

Majori, Aldermannis, Burgenſibus & Recor-
datori villæ ſui de *Bidyford*, in com. *Devon.*
ſalutem.

Belchingley.

Burgenſibus burgi ſui de *Blechingley*, in com.
Surrey ſalutem.

*Blandford Fo-
rum.*

Ballivo & Conſtabulario burgi ſui de *Bland-
ford Forum* in com. *Dorſet* ſalutem.

Aliter.

Ballivo & Conſtabulariis burgi ſui de *Bland-
ford Forum* in com. *Dorſet.* parcel Ducatus ſui
LANCASTR. ſalutem.

Bodmyn.

Majori & Communi Clerico burgi noſtri de
Bodmyn in com. *Cornubiæ.*

Burrowbridg.

Senefcallo burgi noſtri de *Burrowbridge* in
com. *Ebor.* parcel. ducatus noſtrum *LANCASTR.*
ſalutem.

Boffyn.

Ballivo & Burgenſibus burgi ſui de *Boffyn* in
Com. *Cornub.*

Boston.

Majori & Burgenſibus burgi noſtri de St. *Bo-
tolpho* in Com. *Lincoln.*

Brackley.

Majori & Burgenſibus burgi ſui de *Brackley*
in Com. *Northampt.* ſalutem.

Bridewell.

Majori & Communitat. ac omnibus civibus
civit. *London* necnon Gubernatoribus poſſeſſion.
de *Bridewel* & Sanct. *Thomæ.*

Bridgnorth.

Ballivos & Burgenſibus villæ noſtræ de *Bridg-
north* & eorum cuilibet.

Bridport.

Ballivis & Burgenſibus burgi ſui de *Bridport*
in Com. *Dorſet* ſalutem.

Bridgwater.

Majori & Ballivis villæ ſui de *Bridgwater* ſa-
lutem.

Bristol.

Majori, Aldermannis ac Vic. civitatis ſive
villæ *Bristol*, ac Majori & Conſtabular. ſtapulæ
ejuſdem civitatis ſive villæ necnon Ballivis Ma-
jori Communitat. ejusdem civitat. ſive villæ Cur.
iuxta toll. ac Ballivis dict. Majori & Communi-
tat. ejusdem civitat. ſive villæ Cur. pedis pulve-
rizat. & eorum cuilibet ſalutem.

Bal-

- Buckingham.* Ballivis & Burgenſibus villæ ſuæ de *Buckingham* in Com. *Bucks* ſalutem.
- Burton ſuper Trent.* Ballivis & Senefcallo *T. Paget*. Dom. *Paget*, burgi ſui de *Burton ſuper Trent*, & eorum cuilibet.
- Bury St. Edmunds.* Aldermannis, Recordator. & capital. Burgenſibus burgi noſtri de *Bury S. Edmund.* in Com. noſtro *Suff.* & eorum cuilibet.

C.

- Calne.* **C**onſtabulario & Burgenſibus burgi ſui de *Calne* in com. *Wilt.*
- Camelford.* Majori & Burgenſibus burgi ſui de *Camelford* in Com. *Cornub.*
- Cambridg.* Majori & Ballivis villæ *Camtabr.*
- Canterbury.*
- Cur. palatii Archiepſc. in Cantuar.* Senefcallo Libertat. *J.* Dom. Archiepiſcopi Cur. Palatii infra civitat. *Canuar.*
- Caresbroke.* Clariffimo conſanguino ſuo *H.* com. *Southampton.* Conſtabulario caſtri ſui de *Caresbrook* in com. *Southampton.* vel ejus locum tenenti, ac Portatori ſive ejus Deputat. ibidem.
- Carleil.* Majori & Ballivis villæ de *Carleil* in com. *Cumb.* & eorum cuilibet ſalutem.
- Carlifle.* Majori & Ballivis civitat. *Carliffe* ſalutem.
- Carlington.* Majori & Burgenſibus burgi ſui de *Carlington* in com.
- Carlyon.* Majori & Ballivis villæ de *Carlyon*, & eorum cuilibet.
- Caſtle-riſing.* Majori & Burgenſibus vill. ſuæ de *Caſtle-riſing.*
- Biſhops-caſtle.* Ballivo & Burgenſibus vill. caſtri Epiſcopus in com. *Salop.* ſalutem.
- Caſtri Novi ſub. Linam.* Majori & Burgenſibus burgi ſui *Novi Caſtri Subter Linam* in com. *Staff.*

- Castri Novi super Tin.* Majori & vill. *Castri novi super Tinam* in com. *Northumb.*
- Chester.* Majori & Civibus civitat. *Cestrie* in com. *Palat.*
- Chayford Stannaries.* Præclarissimo consanguineo suo *W. com. Pembr.* camerario hospiti sui, præclari ordinis Garterii Milit. custodi *Stannar.* in com. *Devon.* & *Cornub.* capitali Senescallo totius Ducat. Vic. Subsenesc. Deputat. sive ejus locum tenen. cur. *Stannar.* de *Chayford* in com. *Devon.* salutem.
- Cheltenham.* Capitali Senescallo Ballivo & Sectatoribus manerii, burgi sive villæ de *Cheltenham* necnon custodi Gaolæ nostre ibidem.
- Chipping-Wycomb.* Majori Ballivis & Burgensibus de *Chipping-Wycomb.*
- Chepstow.* Senescallo & Ballivis villæ de *Chepstow* in com. *Monmouth.*
- Chipping-Hamden.* Ballivis & Burgensibus burgi nostri de *Chipping-Hamden* in com. *Gloc.*
- Cipping-Norton.* Ballivis, Senescallo sive communi Clerico vel Deputat. ejus burgi sive villæ de *Chipping-Norton* in com. *Oxon.* salutem.
- Christ-church.* Majori & Burgensibus burgi sui de *Christ-church* in com. *Southampton.*
- Cirencester.* Majori, Aldermannis & civibus civitat. *Cicist.*
- Cinque-Ports.* Dilecto & fideli consiliari nostro *Ed. Dom. Z. Constabular.* castri nostri *Dover* custodi, Cancellario & Admirallo *Quinq; Portuum* nostrorum & membrorum eorundem sive ejus locum tenenti, vel Deputat. ibidem salutem.
- Clifton.* Majori, Ballivo & Burgensibus burgi sui de *Clifton Dartmouth Hardnes* in com. *Devon.* salutem.
- Clinck.* Senescallo cur. libertatis Reverendi in Christo Patris Dom. *Tho. Episc. Winton.* manerii sui de *Southwark.*
- Clithero.* Ballivo burgi sui de *Clithero* in com. *Lancast.*
- Colchester.* Ballivis villæ de *Colchester.*

- Coldfield Sutton.* Gardiano & Societati villæ nostræ de *Sutton Coldfield* in com. *War.*
Coventry. Majori & Ballivis civitat. *Coventr.* in com. *War.*
Cricklade. Ballivo & Burgenſibus burgi ſui de *Cricklade* in com. *Wilt.*

D.

- Dartmouth.* **M**Ajori, Ballivo & Burgenſibus de *Clifton Dartmouth Hardnes* in com. *Devon.*
Daventry. Ballivo, Burgenſibus & Communitati de burgo de *Daventry* in com. *Northampton.* ſalutem.
Denbigh. Ballivis & Recordatori burgi ſive villæ de *Denbigh.*
Derby. Ballivis, Recordatorum & Burgenſibus villæ ſui burgi de *Derby* in com. *Derby* & eorum cui-libet ſalutem.
Devifes. Majori, Ballivis & Burgenſibus burgi noſtri de *Devifes.*
Doncaſter. Majori & Recordatori villæ de *Doncaſter* & eorum cuilibet.
Donwich. Ballivis vill. ſive burgi de *Donwich* in com. *Suffolk.*
Dorcheſter. Ballivo & Recordatori burgi ſui de *Dorcheſter* in com. *Dorſet.*
Dover. Conſtabulario noſtro caſtri noſtri de *Dover* in com. *Canc.* infra libertates Quinq; Portuum ſive Deputat. ejus ibid. ſeu eorum alteri.
Downton. Conſtabulario & Burgenſibus burgi ſui *Downton* in com.
Donwick. Ballivis burgi ſive villæ de *Danwick* in com. *Suff.* ſalutem.
Droitwich. Ballivis & Burgenſibus burgi ſui de *Droitwich* in com. *Wigorn.*
Durham. Reverendo in Chriſto Patri *A.B.* providentia divina *Dunelm.* Epifcopo aut ejus locum tenenti ibid. ſalutem.

E.

East-Grinstead. **B** Allivo & Burgenfibus burgi fui de *East-Grinstead* in com. *Suffex*.

East-Low. Majori & Burgenfibus burgi fui de *East-low* in com. *Cornub.*

East-Stretford. Ballivis villæ suæ de *East-Stretford* in com. *Notting.*

Ebor. civitas. Majori, Aldermannis & Vic^o civitat. *Ebor.*

St. Petri Ebor. Senescallo cur. libertatis Decani & Capitali Eccl. Cathedralis S. Petri, *Ebor.*

Ely. Justic. Episcop. *Elien.* ad placita infra Insulam *Elien.* tenend. ac Senescallo ejusdem Episcopi infra libertat. insulæ præd. & eorum cuilibet salutem.

Evermeutb. Majori & Burgenfibus villæ suæ de *Evermeutb* in com. *Southampt.*

Evesham. Majori & Burgenfibus burgi fui de *Evesham* in com. *WVigorn.* &c.

Exon. Majori & Ballivis civitatis sui *Exon.* in com. *Devon.* ac Ballivis Cur. provost ejusdem civitat. & eorum cuilibet.

Eye. Ballivis nostri villæ & burgi de *Eye.*

F.

Farnbam. **B** Allivis burgi & villæ de *Farnbam* in com. *Surrey.*

Aliter. Senescallo Cur. castri Reverendi in Christo Patri Dom. *L. Winton.* Episcop. Manerii sui de *Farnbam.*

Fleet. Guardiano Prisonæ nostræ de *le Fleet*, sive ejusdem locum tenent. salutem.

Fordington. Ad curiam *Caroli*, principis *WVallie*, Ducis *Cornub.* Comit. *Castr.* & *Flint.* Manerii sui de *Fordington* in com. *Dorset.*

Foway. Præpositis & Burgenfibus burgi sui de *Foway* in com. *Cornub.* salutem.

G.

G.

- Gate-house Westminster.* **C**ustodi nostri de *le Gatehouse* infra *Westminsterium*.
Gatton. Burgenſibus burgi ſui de *Gatton* in com. *Surrey*.
Gillingham. Senefcallo Curie ſuæ de *Gillingham* in com. *Dorſet*, hac vice ſede Archiepiſcopi *Cantuar.* jam vacante ejus Deputat. ibidem.
Gypovicam. Ballivis villæ ſuæ *Gipovici*, vel de *Ipswich* in com. *Suff.* ſalutem.
Glaſtonbery. Curie libertatis Dom. Regis de *Glaſtonbury* in com. *Somerſet*.
Gloceſter. Majori, Aldermannis & vic' civitatis noſtræ de *Gloceſter*.
Grampound. Majori & Burgenſibus burgi ſui de *Grampound* in com. *Cornub.*
Grantbam. Aldermanno & Burgenſibus villæ de *Grantbam* in com. *Lincoln.* ſalutem.
Graveſend and Milton. Præpoſit. jurat. & capital. Inhabitant. villarum & paroch. de *Graveſend & Milton* in com. *Canc.*
East-Greenſtead. Ballivo & Burgenſibus burgi ſui de *East-Greenſted* in com. *Suffex* ſalutem.
Grimſby. Majori & Burgenſibus villæ ſuæ magni *Grimſby* in com. *Lincoln.*
Guilford. Majori & probis hominibus villæ noſtræ de *Guilford*.

H.

- Hartpool.* **M**ajori & Burgenſibus burgi ſui de *Hartpool* infra Epiſcopatum *Dunelm.*
Haſelmere. Burgenſibus burgi ſui de *Haſelmere* in com. *Surry*.
Hatfield. Ad Curiam Manerii noſtri de *Hatfield* in com.
Helſton. Majori & Burgenſibus burgi noſtri de *Helſton* in com. *Cornub.*

- Henly upon Thames.* Ballivis, Gardian. Burgenſibus & Communitat. villæ de *Henley* ſuper *Thameſin* in com. *Berks.* ſalutem.
- Hereford.* Majori, Aldermannis & Civibus civitatis noſtræ *Hereford.*
- Herewich.* Majori & Senefcallo burgi ſui *Herwich.*
- Hertford.* Majori & capital. Burgenſibus burgi noſtri de *Hertford* necnon Senefcallo Curiaſ noſtri de Recordatori, ibidem.
- Hexam.* Senefcallo cur. ſuæ de *Hexam* in com. *Westmorland.*
- Heydon.* Majori & ballivis vill. ſuæ de *Heydon* in *Holderneſs* in com. *Ebor.*
- Heytesburg.* Ballivo & Burgenſibus burgi ſui de *Heytesburg* in com. ſalutem.
- Higbam-ferris.* Majori & Aldermannis vill. noſtri de *Higbam-ferris* in com. *Northampt.* & eorum cuilibet.
- Horſham.* Majori & Burgenſibus burgi ſui de *Horſham* in com. *Suffex* ſalutem.
- Huntington.* Qu.
- I.
- Fernmouth.* **B**allivis villæ ſive burgi noſtri magnæ *Fernmouth.*
- St. Fermins.* Prepoſito & Senefcallo burgi de *St. Fermins* in com. *Cornub.*
- Inſul. Elien.* Juſticiari noſtris ad placita inſra *Inſul. Elien.* in com. *Cantabr.* tenend. Assignat.
- St. Ives.* Prepoſit. & Burgenſibus burgi ſui de *St. Ives* in com. *Cornub.*
- Ipswich.* Ballivo vill. ſuæ de *Ipswich* in com. *Suffolk* ſalutem.
- Juſtic' B. R.* J. L. Mil. Capital. Juſtic. noſtro ad placita coram nobis tenend. Assignat.
- Juſt' de Banco.* T. H. Uni Juſticiarium noſtrorum ad placita coram nobis tenend. &c.
- H. H. Mil. & Bar. capitali Juſticiarium noſtro de Banco.
- R. H. Mil. uni juſticiarum noſtr. de Banco.

K.

- St. Katherins prope Turrin. Lond. Aliter.* Senescallo, Magistr. five Custod. Hospital. five liber. Capell. *S. Katherinæ prope Turrin London*, seu ejus locum-tenenti ibidem.
- Kendall.* Senescallo libertat. Magistr. Fratrum & Sororum & Capell. in Ecclesia Hospit. *S. Katherinæ virginis & martyris prope London*, cur. nostr. ibidem necnon Ballivo ejusdem.
- Kirkby-Kendal.* Aldermanno, Recordatori & Burgensibus burgi de *Kirkby-Kendal* in com. *Westmerland*.
- Kings-Norton.* Senescallo, Ballivo & Sectatoribus cur. manerii de *Kings-Norton* in com. *Wigorn.* & eorum cuilibet.
- Kingston super Hull.* Majori & Vic. vill. nostræ de *Kingston super Hull*.
- Kingston upon Thames.* Ballivis & Senescallo Cur. nostræ de *Kingston super Thamesin*, & in absentia dicti Senescallo, Ballivis & Recordatori ejusdem villæ five duobus eorum salutem.

L.

- Lancast. burg.* Majori & Ballivo burgi sui *Lancaster* in com. *Lancaster*.
- Launceston.* Majori & Communitatis burgi sui de *Launceston*, alias *Downbever*.
- Lanceston alias Newport. Ledbury.* Senescallo & Ballivo Cur. feod. Castri nostri *Lanceston* parcel. Ducat. nostri *Cornub.* Ballivo suo burgi sui de *Ledbury* in com. necnon judicibus cur. ejusdem burgi salutem.
- Leicester.* Majori, Ballivis & Burgensibus burgi sui de *Leicester*. Majori & Burgensibus villæ *Leicester*.

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*Lempster.*Ballivis & Burgenfibus burgi fui de *Leominster* in com. *Heref.* salutem.*Leverpool.*Majori & Aldermanno villæ suæ de *Leverpool* in com. *Lancaster.**Lewes.*Constabulario & Burgenfibus burgi fui de *Lewes* in com. *Suffex* salutem.*Lidford.*Majori & Burgenfibus burgi de *Lidford.**Lincoln.*Majori vic. & civibus civit. fui *Lincoln.**Liskarret.*Majori & Burgenfibus burgi de *Liskarret.**Litchfield.*Ballivis, Burgenfibus & Civibus civitar. *Litchfield.**London.*Majori, Aldermanno, ac Vic. *London*, & eorum cuilibet salutem.*Lostwich.*Majori & Burgenfibus burgi fui de *Lostwich* in com. *Cornub.**Ludgershall.*Burgenfibus burgi fui de *Ludgershall* in com. *Wilt.* salutem.*Ludlow.*Ballivo villæ de *Ludlow* in com. *Salop.**Lymington.*Majori & Burgenfibus burgi fui de *Lymington* in com. *Southampt.**Lyn Episc.*Majori villæ de *Lyn Episc.* in com.*Lyn Regis in*Majori villæ nostr. de *Lyn Regis* in com.*Dorset.**Dorset.**Lyn Regis.*Majori & Recordatori villæ five burgi fui de *Lyn Regis* in com. *Norfolk* & eorum utrique.

M.

*Maidenhead.***G**Ardiano, Pontinar. Burgenf. & Communitat. villæ de *Maidenhead* in com. *Berks* salutem.*Maidston.*Majori villæ & paroch. de *Maidstone.**Malden.*Ballivis villæ suæ de *Malden* in com. *Effex.**Malmsbury.*Aldermannis & Burgenfibus burgi fui de *Malmsbury* in com. *Wilt.* salutem.*Mandevile.*Senescallo & Ballivo honoris de *Mandevile* parcell Ducat. *Lancstr.* salutem.*Marlborough.*Majori & Burgenfibus burgi five villæ de *Marlborough* in com. *Wilt.* Marr.

- Mar. Maref. coram nobis.* Marr. Marefcal Cur. noſtr. coram nobis ſive ejus Deputat.
- Marr. Hoſpit.* Judicibus curiæ virg. hoſpitii noſtri, vel ejus Deputat. ibidem. ſalutem.
- Marſhals Court or Verge Court.* Senefcallo Cur. Mareſcal. hoſpitii noſtri, ac marr. noſtro ejusdem hoſpiti, necnon Judicibus curiæ noſtr. Virg. hoſpitii præd. & eorum Deputat. ibidem.
- S. Martins le Grand London.* Senefcallo Decani & Capituli Eccleſ. Collegiat. beatri Petri Weſtm. Cur. libertatis ſuæ ſive præcinct. Sancti *Martini le Grand London*, & Conſtabular. ibidem ſalutem.
- Melcomb Regis. Weymouth. & Melcomb Regis.* Majori vill. ſuæ de *Melcomb Regis*. Majori, Aldermannis, Ballivis, Burgenſibus & Communitat. villæ de *Weymouth*, & *Melcomb Regis* in com. *Dorſet*.
- Michael.* Præpoſit. & Communitat. Burgi ſui *Michaelis* in com. *Cornub.* ſalutem.
- Midburſt.* Ballivo & Burgenſibus burgi ſui de *Midburſt* in com. *Suffex*.
- Monmouth. Morpetb.* Majori & Ballivis villæ ſuæ de *Monmouth*. Ballivis & Burgenſibus burgi ſui de *Morpetb* in com. *Northumb.*
- Mynhead.* Præpoſit. & Burgenſ. burgi noſtri de *Mynhead* in com. *Somerſet*.

N.

- Newark upon Trent.* **M**ajori & Aldermannis villæ de *Newark* ſuper *Trent* in com. *Notting*.
- Newberry.* Majori, Aldermannis & Burgenſ. burgi de *Newberry* in com. *Berks*.
- Newport.* Majori & Ballivis vill. ſive burgi de *Newport* in com. *Southampton*.
- Newton.* Ballivo & Burgenſibus burgi ſui de *Newton* in com. *Lancaſtr.*
- Northampton.* Majori & Ballivis vill. *Northampton* in com. *Northampton*.

Majori

*Norwich.*Majori, Aldermannis & Vic. Civitatis *Norwich* in com. *Norfolk*.*Nottingham.*Majori Aldermannis & Vice Comitibus villæ *Nottingham* in com. *Not.**Nov. Castrum super Tinam.*Majori, Aldermannis & Vic. vill. *Novi-Castri super Tinam* in Com. *Northumb.**Nov. Castrum subter Linam.*Majori & Burgenfibus burgi sui *Novi Castri subter Linam* in com. *Staff.*

O.

*Ofwestry villa.***B** Allivis & Senescallo villæ de *Ofwestry* in com. *Salop.**Orford.*Majori & Portmannis vill. de *Orford* in com. *Suff.**Oxon. Civit.*Majori & Ballivis civitatis *Oxon.* in com. *Oxon.**Oxon. Univers.*Vice-Cancellario *Academiae Oxon.*

P.

*Padstow.***M**ajori & burgenf. burgi nostri de *Padstow* in com. *Cornub.**Pembridge.*Ballivo & Senescallo villæ seu burgi de *Pembridge* in com.*Peterborough.*Senescallo Cur. Decani & Capitul. Ecclesiæ Cathedral. Civitatis de burgo Sancti *Petri*, in com. *Northamp.* & Burgenfibus ejusdem civitat. & eorum cuilibet.*Petersfield.*Majori & Communitat. burgi sui de *Petersfield* in com. *Southamp.**Pickering.*Ballivis & Sectatoribus Cur. nostræ de *Pickering* in com. *Ebor.**Plymton.*Majori, Ballivis & Burgenfibus burgi sui de *Plymton* Maris in com. *Devon.* salutem.*Plymouth.*Majori & Communitati Burgi sui de *Plymouth* in com. *Devon.*

Majori

- Pontfract.* Majori vill. suæ de *Pontfract.* in com. Ebor. parcel. Ducat. *Lancastr.*
- Aliter.* Ad cur. honoris nostri de *Pontfract.* in com. Ebor. parcel Ducat. *Lancastr.*
- Pool.* Majori vill. de *Pool*, & Seniori Ballivorum ejusdem villæ.
- Portsmouth.* Majori Aldermannis & Burgenſibus vill. de *Portsmouth.*
- Preston.* Majori & Ballivis vill. five burgi sui de *Preston* in *Lancastr.*
- Cur. Palatii.* Judicibus cur. Palatii nostri *Westminst.* & eorum cuilibet.

Q.

- Quinborough.* **M**ajori & Burgenſibus burgi sui de *Quinborough* in com. *Canc.*

R.

- Reading.* **M**ajori, Aldermannis & Burgenſibus burgi de *Reading* in com. *Berks.*
- Richmond.* Aldermannis, Recordatori & Burgenſibus burgi nostri de *Richmond* in com. *Ebor.*
- Rillaton.* Senescallo, Decemar' & Præposit. ac liberis tenentibus manerii sui de *Rillaton* parcel. ducat. sui *Cornub.*
- Rippon.* Senescallo & Ballivis libertatis cur. canon. nuper canonicorum & capital. Ecclesiæ Collegiat. de *Rippon* in com. *Ebor.* parcel. Ducat. nostri *Lanc.*
- Rochester.* Majori, Aldermannis & Civibus civitatis nostræ *Koffen.* in com. *Canc.* salutem.
- Rumney.* Ballivis & Jurat. de *Rumney-Marsh* in com. *Canc.*
- Rygate.* Ballivo & Burgenſibus burgi sui de *Rygate* in com. *Surry.*

Rumsey.

Majori & Recordatori, vel ejus Deputat. & Alderm. villæ de *Rumsey* infra & eorum cuilibet salutem.

S.

Salop or
Shrewsbury.

BAllivis villæ nostræ *Salop.* in com. *Salop.* salutem.

Civitatis. Novæ
Sarum.

Ballivis libertat. Episc. *Sarum* civitatis novæ *Sarum.*

Old Sarum.

Burgenſibus burgi ſui veteris *Sarum* in com. *Wiltſ.*

Le Savoy extra
Temple-Bar.
Scarborough.

Ballivo libertat. Dom. Regis Ducat. ſui Lanc. apud le *Strand* in com. *Midd.*

Ballivis vill. nostræ de *Scarborough* ſive *Scarburg* in com. *Ebor.*

Shaftsbury.

Majori & Burgenſibus burgi ſui de *Shaftsbury* in com. *Dorſet.*

Shafton.

Majori, Recordatori & Burgenſibus Burgi de *Shafton* in com. *Dorſet.*

Shoreham.

Conſtabulario & Burgenſibus burgi ſui de *Shoreham* in com. *Lanc.*

St. Fermis.

Præpoſit. & Senefcallo burgi de *St. Fermis* in com. *Cornub.*

Southmoulton.

Majori & capital. burgenſibus vill. ſuæ *Southmoulton.*

Southold.

Ballivis & Burgenſibus libertatis villæ de *Southold.*

Southampton.
Aliter.

Majori & Ballivis villæ ſuæ de *Southampton.*

Majori & Ballivis villæ nostræ *Southampton*, cur. ſuæ pedis pulverizat. ibid. Necnon Cuſtod. Gaol. nostræ infra eandem villam ejuſdem Deputat. ibid. & eorum cuilibet.

Southwark
Maner.

Senefcallo cur. libertat. reverendi in Chriſto Patris B. Winton. Episcop. manerii ſui de *Southwark* in com. *Surry.*

¶

Senef.

- Southwark Burrough.* Senescallo Cur. Libertat. Majoris Communitatis ac civium *London* burgi sui de *Southwark*.
- Stafford.* Ballivis & Burgenſibus Burgi de *Stafford*.
- Stamford.* Aldermannis & Burgenſibus villæ suæ de *Stamford* in com. *Lincoln*.
- Stepney.* Senescallo prænobilis *T. W.* manerii sui de *Stepney*.
- Steyning.* Constabulario & Burgenſ. burgi sui de *Steyning* in com. —
- Stockbridge.* Ballivo & Burgenſibus burgi sui de *Stockbridge* in com. *Southampton*.
- Stretford East.* Ballivis villæ suæ de *East-Stretford* in com. *Not.*
- Sudbury.* Majori, Aldermannis, Burgenſibus ac Senescallo burgi sive villæ de *Sudbury* in com. *Suff.* & eorum cuilibet salutem.
- Sutton Coldfield.* Gardiano & Societati villæ Reg. de *Sutton Coldfield* salutem.

T.

- Tamworth.* Ballivis vill. nostræ de *Tamworth* in com. *Staff.* & *War.*
- Tavestock.* Senescallo sive Ballivo *F.* comit. *Bedford* libertat. suæ de *Tavestock*.
- Taunton.* Ballivo reverend. in Christo Patr. *T.* Episcop. *Winton.* libertat. suæ de *Taunton* & *Taunton-Dean*.
- Tewksbury.* Ballivo Burgenſibus & communitat. burgi sui de *Tewksbury*.
- Thacksted.* Majori Ballivis & communitat. burgi de *Thacksted* in com. *Essex* & eorum cuilibet salutem.
- Thetford.* Majori & Recordatori burgi nostri de *Thetford* in com. *Norfolk*.
- Thuske.* Burgenſibus burgi sui de *Thuske* in com. *Eborum*.

Majori

Torrington magna.
Aliter.

Majori, Aldermannis & Burgenſibus burgi ſive villæ de *Torrington Magna*.

Majori, Aldermannis, Capital. Burgenſibus & Senefcallo burgi ſive villæ de *Torrington Magna* in com. *Devon*.

Totneſs.

Majori & Burgenſibus burgi de *Totneſs* & eorum cuilibet.

Trebenin.

Majori & Burgenſibus burgi ſui de *Trebenin*, alias *Boffini* in com. *Cornub.*

Trigoni.

Senefcallo & Ballivo *H. P.* manerii ſui de *Trigoni* in com. *Cornub.*

Trellock.

Majori & Ballivis *W.* com. *Pembrook*, villæ ſuæ de *Trellock* in com. *Cornub.*

Truro.

Majori & Burgenſibus burgi ſui de *Truro* in com. *Cornwal.*

Turris London.

W. W. militi Conſtabular. locum tenenti *Turris London.* Necnon Senefcallo Cur. ejuſdem & eorum utrique.

V.

Vierge or Marſh ilſea-Court.

Senefcallo cur. Mareſc. Hoſpitii noſtri ac Mareſcallo noſtro ejuſdem hoſpitii noſtri, necnon Judicibus cur. noſtr. *Vierge*, & eorum cuilibet.

Uſke.

Præpoſitis & Ballivis villæ ſive burgi de *Uſke*.

W.

Waitel.
Wakefield.

Ballivis & Sectatoribus cur. ſuæ de *Waitel*.
Ad cur. manerii noſtri de *Wakefield* in com.

Walden.

Ebor. Theſaur. & Camerar. villæ noſtræ de *Walden* in com. *Eſſex.*

Wallingford.

Majori, Aldermannis & Recordatori burgi ſive vill. de *Wallingford* in com. *Beiks* & eorum, cuilibet ſalutem.

Walsal.

Majori

Ballivis

- Warwick.* Ballivis & Recordatori burgi nostri *Warwic* in com. *Warwick*.
- Weymouth.* Majori, Aldermannis, Ballivis & Burgenſibus & Communitat. vill. de *Weymouth* & *Melcomb* Regis in com. *Dorſet*.
- Wells.* Senefcallo ſive Ballivo cur. noſtr. de placit. ad Reverend. in Chriſto Patrem Dom. J. permiſſione Divina Bathon. & Wellen. Episc. pertini. ſive conceſſ. tent. apud Guild hall infra burgum & villam noſtram de *Wells* in com. noſtro *Somerſet*.
- Wenlock.* Ballivo & Senefchall. vill. libertat. de *Wenlock* magna in com. *Salop*.
- Westburg.* Majori & Burgenſibus Burgi ſui de *Westburg* in com.
- Westm. Civit.* Ballivo libertat. Decani & capituli. Eccleſiæ Collegiat. beati Petri *Westm*.
- Westmin. Dean & Cap.* Ballivo libertat. Decani & Capituli Eccleſiæ Collegiat. beati Petri *Westm*.
- Wickham.*
- Wigmore.* Senefcallo & Ballivo villæ ſive burgi de *Wigmore* in com. *Heref*.
- Winchelsea.* Majori, Jurat. & Communitat. antiquæ villæ de *Winchelsea* unius quinque Portuum noſtorum ſalutem.
- Nova Windſor.* Majori, Ballivis & Burgenſibus villæ ſive burgi noſtri de *Nova Windſor* & eorum in com. *Berks*.
- Aliter.* Majori, Aldermannis, Ballivis & Subſenefcallo burgi ſui de *Nova Windſor* & eorum cuilibet.
- Wincheſter.* Majori, Recordatori vel ejus Deputat. & Ball. civitat. noſtr. *Winton* & eorum cuilibet.
- Woodſtock.* Majori vill. ſuæ de *Nova Woodſtock*.
- Aliter.* Majori & Communitat. Burgi de *Novo Woodſtock*.
- Worceſter.* Majori, Recordatori & Aldermannis civitatis noſtræ *Worceſter*.
- Worham.* Majori & Burgenſibus burgi ſui de *Worham* in com. *Dorſet*.

*Wotlow.*Ballivis villæ de *Wotlow*.*Wootton-Basset.*Majori & Burgenſibus burge de *Wootton-Basset*
in com. *Wiltſ* & eorum cuilibet.*Writtel.*Ballivis & Sectatoribus cur. ſuæ de *Writtel* in
com.*Wye.*Senefcallo & Ballivo *H. C. Nobil. Ordinis*
Garterii Milit. Dom. Hunſdon Regaliſ manerii ſui
de *Wye* in com. *Canc.* & eorum cuilibet ſalutem.

Y.

*York.*Vide *Eborum*.

Note, Some of the Titles of theſe Corporations peradventure are altered in ſome particular, by reaſon of renewing their Charters and having larger Grants, by which they are incorporated a-new, of which the Attorney muſt the beſt he can inform himſelf. The beſt way to be informed of the true and certain Directions, is to repair to the Curſitor of the County where the Corporation is.

C A P. IX.

Of Actions brought by Corporations
and against Corporations, and
Pleadings.

A Parson, Archdeacon, &c. may have Action of Waste, and how the Writ shall be. They shall have Aid. If the essential Name of the Corporation be named in the Action it is sufficient. In Ejectment upon a Lease by the Warden, &c. is good without naming his Christian Name. Aliter of a Parson, Vicar, &c. Action against a Corporation for not taking Bail. Action of Covenant brought by Lincoln against Derby. Corporation answerable for what is done by their Officer. When an Action is brought against a Corporation, and against the Inhabitants of a Village, the difference as to naming them. In Faux Imprisonment against the Mayor, &c. of Norwich, the Original was directed to the Coroners of the said City. The Form of the Writ in a real Action by a Corporation, and saith not ut jus & hæreditatem. Officer of an Inferior Court where he justifies Proceedings ought to shew their Jurisdiction, i. e. whether by Grant or Prescription. Profert Literas Patentes, where it need not be. Writ of Frank Almoigne by the Custos, &c. of All Souls-College, how it ought to be in Jure Collegii omitted. In Declaration shews not the number of the Guardians which were appointed by the Charter. Where a Grant should be pleaded by way of Bargain and Sale and not as a Grant. In Pleading the Defendant saith not it was Antiqua Civitas. The Plaintiff declares a-

gainst J. S. in Custody of the Serjeant, and it appears not that the Serjeant had any Precept to arrest him, the Defendant appears and demurs upon the Declaration. Corporation cannot prescribe by a Name which they have received within time of Memory. Civibus omitted in the Judgment. All necessary Circumstances intended to be executed. Seised in Fee and (in jure left out). Per Nomen. An Averment sufficient to shew the Name of the Corporation, and the Name in the Lease or Grant are all one in Substance. Where it need not be express'd that the Debt did arise infra Jurisdictionem. But if he tender the Plea and they refuse, it's Error. Three Presidents of pleading Recovery in an Inferior Court, in Actions of Trespass for taking Goods, and Faux Imprisonment.

Waste.

A Parson, Vicar, Archdeacon, Prebendary, and the like, may have an Action of Waste, and the Writ shall say, *Ad exheredationem Ecclesiæ, &c. ipsius B. or Prebend. ipsius, &c.* A Parson that accepts a Lease for Life shall have a *Consimili Casu* during the Life of the Lessee, and a Writ of Entry *ad Communem Legem* after his Death, or a Writ *ad terminum qui præterit*, or a *quod permittat*, in the *debet*, and none can maintain any of these Writs but a Tenant in Fee-simple or Fee-tail.

Aid.

In a real Action a Parson, Vicar, Archdeacon, Prebendary, &c. shall have Aid of the Patron and Ordinary, as Tenant for Life shall have ; so that a Parson to many Purposes hath a qualified Fee, and another is as Tenant for Life, but the Fee is an Allowance, and therefore he must discontinue ; and therefore he cannot have a Writ of right, nor a *Ne injuste vexet*, nor a *Quo jure*.

But

But a Bishop, Dean, Master of an Hospital that hath Colledge and Common Seal, shall have a Writ of right, for that they have the highest Estate. *1 Inst. 341. b. 6.*

They must be named by the true Name of their Corporation. Yet if the essential part of a Corporation be named it is sufficient in the Action, as *ad respond. Majori & Burgensibus de Lyn Regis in Com. N.* and it was found they were incorporated *Major & Burgenses Burgi de Lyn*, and *non per illud nomen.* *Per Cur.* the Omission of this Word (*Burgi*) shall not bar the Plaintiffs. *1 Brownl. 57.* Mayor and Burgessees of *Lyn versus Pairt.*

Upon *Ejectione firme* the Plaintiff declared upon a Lease by the Warden and Fellows of *All Souls College*, without naming any Name of the Warden. But, *Per Cur.* the Declaration is good enough, and they relied specially upon the Book of *21 Ed. 4. 15, 16.* where Debt is brought by the Dean and Chapter without any Christian Name, and the Writ held good. And by *Anderson* it stands with Reason, forasmuch as the Colledge was incorporated by the Name of Warden and Fellows, and not by any Christian Name, that they may purchase and lease by such Name without any Christian Name, and may be impleaded and implead others by such Name; and as the Fellows in such case need not to be named by their Christian Names, no more ought the Warden. *Aliter* of a Parson, Vicar, &c. for in such case the Name of Baptism ought to be added; and yet *12 H. 4. 151.* is if a Lease be made by Dean and Chapter in these Words, *Nos Decani & Captuli*, the same Lease is void, which was granted by the Court, *1 Levin. 307.* in *Carter and Claycrade's Case.*

H. C. brought Action on the Case against the Mayor, Town-Clerk and Goaler of *Boalton*, in *Com. L.* and declared that where he had affirmed a

For not taking
Bail.

Plaint of Debt in the Court of the said Town before the said Mayor, &c. against J. S. and thereupon had caused the said J. S. to be arrested; the said Defendants did conspire together to delay the Plaintiff of his said suit in peril of his Debt, had let the Plaintiff go at large without taking Bail. *Perian* conceived that the Action doth not lie, for the not taking Bail is a judicial Act, for which he shall not be impeached. But all the other Justices *pro Quer.* for the not taking Bail is not the Cause of this Action but the Conspiracy. 1 *Leon.* 189. *Cockstall's Case.*

The Defendant in an Action on the Case pleads, that the Town of *Yarmouth* is an ancient Burrough, and that they have been incorporated by the Name of Bailiff and Burgesses, &c. and that they have had time out of mind an Officer called a Water-Bailly, and that time out of Mind, &c. they and their Predecessors have had and taken Toll of the Inhabitants of *Loftal* for any of their Goods brought thither to merchandize with, and if it be not paid they have used time out of mind to distrein for it by their Water-Bailiff, and that he is Water-Bailiff, &c. Exception was, That he hath not set forth that they have used to demand it by their Water-Bailiff, and it may be they have several Officers, one to demand, and another to distrein; and when a Man is to do a thing against common Right he ought to shew Authority express in the whole. But *per Hob.* 1. to shew the Authority to demand is not necessary, for the Prescription is not upon Demand to distrein; for the common Officer hath Authority to demand, for they ought to demand it who ought to take the thing demanded, and those are the Bailiffs and Burgesses, and then when their Water-Bailiff doth it, it is as much as if it had been done by the Corporation. 1 *Leon.* 232. and the same is the Act of the whole Corporation.

The

The Mayor and Commonalty of *Lincoln* brought Action of Covenant against the Mayor and Commonalty of *Derby*, and declared that the Mayor and Commonalty of *Derby* had covenanted with the Mayor and Commonalty of *Lincoln* that they should be quit of Murage, Pontage, Custom and Toll within the Town of *Derby*, of all Merchandizes of those of the Town of *Lincoln*; and farther declared that *J. W.* and *H. M.* two Burgeffes of the Town of *Derby* had taken Toll of certain Burgeffes of the Town of *Lincoln*, &c. Exception was taken to this Declaration, because they had alledged the taking of such Toll not by the Corporation of *Derby*, but by *J.* and *H.* two of the Burgeffes, in which Case the Plaintiff might have an Action of Trespass against the Burgeffes, for the Act of any the Corporation is not the breaking of the Covenant made by the Commonalty: But it was not allowed. For if the common Officer of a Town doth any of thing for their common Use, it is intended such thing was done by the Officer, it is reason all the Town be answerable for it: and the whole Commonalty by Intendment cannot come at one time to be taken. Cited i *Leon. p. 232.* in *Ward and Knight's Case.*

Corporation of *Lincoln* bring Action against the Corporation of *Derby*.

Corporation answerable for what is done by their Officer.

Hob. 211. An Action brought against the Warden and Fellowship of Weavers. The Book saith, That they need not set themselves out to be incorporate, the Name shews it; so of Cities. *Sed Q.*

Name.

So when the Writ is brought against Mayor and Commonalty the Law takes notice of them to be a Corporation and the Writ against them as such: But against the Inhabitants of a Village, a Writ brought by that name cannot be taken to be other than Inhabitants, the Name so shews it. And in such Case some of the Inhabitants by Name, (*viz.*) *A.* and *B.* appear in Person in their own and the

Name of the rest of the Inhabitants and plead and are Defendants. So in *Cok. Entr.* 537.

In *Faux Imprisonment* by *N.* against the Mayor, Sheriffs, Citizens and Commonalty of the City of *Norwich*, the Original Writ was directed to the Coroners of the said City, and good; for the Sheriffs are parcel of the said Corporation. 4 *Leon.* 96. *Neale's Case.*

Writ.

CUSTOS Collegii Omnium Animarum, &c. de Oxon, petit versus F. T. 100 acras terra in T. ut jus & hereditatem suam, &c. whereas it should be, ut jus & hereditatem ipsius custodis & Collegii, &c. de Oxon. But the Court held the Writ good, and all one; for the Corporation can have no other Lands there, in the Right of their Corporation. 1 *Anderson*, fo. 272.

Jurisdiction
shewed.

Officer of an Inferior Court, where he justifies Proceedings there, ought to shew their Jurisdiction, viz. if it be by Grant or Prescription; if by Charter it ought to be *Profert in Curia* — the Letters Patents. But a Stranger which so justifies is not compellable so to do. In Declarations such *Profert* is not requisite; but in a Bar it is *per Twisden, Windbam aliter.*

*Profert Literas
Patentes* where
needful.

None is bound to *proferre* Letters Patents in Court, but in a *Quo warranto*. And he which justifies as Justice of the Peace is not bound to shew his Commission. *Sid. p.* 311.

Frank-Al-
moigne.

A Writ of Right was brought by *Custos & collegium* of All Souls in Oxon. and the Writ was said *clamat tener. de nobis in liberam puram & perpetuam eleemosinam, & quod clamat esse jus & hereditatem suam, &c.* and Exceptions were taken to the Writ. 1. It ought to be in *liberam Eleemosinam* with a double *ee*. 2. It ought to be *Libe-*
rans

ram eleemosinam, and not *puram & perpetuam*.

3. They ought not to shew any tenure in special, but generally *Tenet de nobis*. 4. They say not in *jure Collegii*, *sed non allocantar*, for first, *injure Collegii* is the common Course, and therefore good. For the second it is but surpluse and not material. 3. They did well to express the Tenure, for otherwise it might be taken for a *tenure in capite*, which they ought to avoid. 4. When the Writ is brought by *Custos & Collegium*, this cannot be but in *jure Collegii*, as in their Corporation; for they have no other Capacity, and the Presidents are both ways. Co. 232. the Warden of *All-Souls College* in *Oxon. vers. Tanworth*.

In jure collegis.

In the Case of the Guardian and Fellowship of the Weavers of *Newbery*, that the Queen incorporated them by that Name, and gave them power to make Laws *rationi consonas*, and the Queen by the said Letters Patents did ordain for her Heirs and Successors, that none should exercise the Trade of Weaving within the said Town except he were first admitted thereunto by the Guardians and Society of Weavers, and then shews the Act of 19 *H. 7.* and then that two Guardians, and the greater part of the Fellowship of Weavers did make an Ordinance, &c. There was a gross Fault in the Declaration that it did not appear that the Corporation did consist of two Guardians; for there was no more declared, than that they were incorporated by the name of Guardians, &c. which may be more than two, and they had omitted the Clause whereby the number was appointed. *Hobart* was of opinion, That they need not to shew how they were Incorporated; for the Name argues a Corporation, as the like of Cities, and the Plea *nil debet* (or the like) requires proof of it. *Hobart* 211. *Norris and Staps.*

If

Where the proper Name of the Dean must be shewed.

If by Licence Lands are given to the Dean and Chapter of the Holy and undivided Trinity of *Northwich*, this is good, altho the Dean be not named by his proper Name, if there were a Dean at the time of the Grant; but in pleading he must shew his proper name. So on the other side, if the Dean and Chapter make a Lease without naming the Dean by his proper Name, the Lease is good, if there were a Dean at the time of the Lease; but in pleading, the proper Name of the Dean must be shewed; so the Judges held in 13 *Ed. 4.* the Grant is good to a Mayor, Aldermen and Commonalty, albeit the Mayor was not named by his proper Name; but in Pleading it must be shewed, 1 *Inst.* 3. a.

Pleading by way of Custom and not by Prescription.

That the Mayor and Commonalty of *London*, time out of Mind, were a body Corporate, and seized of a Wharf called *Queen-hyth*, and have taken for every Porter's burden of Goods there laid to be conveyed thence by Water, of Persons not lawfully thereof discharged, and that Freemen ought to be discharged, and that he was a Freeman; as this is pleaded it's a mere prescription in the Corporation, and yet it being pleaded by Inhabitants, as to a discharge of Freemen it must be pleaded by way of Custom, and by way of Prescription; not because the nature of the thing, but because the Freemen cannot prescribe in their Persons, and therefore are allowed to lay a Custom for their discharge. *Hob.* 86.

Action *sur Case*, supposing that the Governors and the Poor of the Hospital of the *Holy Trinity* in *Greenwich*, of the Foundation of *Henry* Earl of *Northumberland* was settled in Fee of an House in the Parish of *St. Martins* in the *Fields*, and that he and all those whose Estate in the said House, &c. have had a Foot-way from the said House unto the River of *Thames*, in the same Parish, and let the said

said House to the Plaintiff for Years, That the Defendant erected a Gate cross the High-way, in the said Parish, &c. *prædict.* *Pro Quer.* moved in arrest of Judgment, that this Declaration was not good, because it is shewn that the Corporation and all those whose Estate, have had, &c. whereas a Corporation cannot Prescribe but in him and his Predecessors; also one cannot shew a *Que Estate* without shewing how by Deed, for they cannot have it without Deed. *Per* three Justices against *Doderidge*, who was of that Opinion, The Action is brought by Lessee for them who hath not the Deed; and it is but a conveyance to the Action, which is grounded upon the Disturbance done to him in Possession. But if he had claimed Rent or Common in gross, which cannot pass without Deed, it had been otherwise; for there he could not shew *Que Estate* without shewing the Deed, how he came by the Estate. *M.21. Jac. B.R. Slackman and West.*

How a Corporation may Prescribe.
Que Estate.

Monstre de Faits.

By Stat. 7 *Jac. c. 5.* In an Action on the Case, Stat. 7 *Jac.* Trespass, Battery, or Faux Imprisonment against any Justice of the Peace, Bailiff, Mayor of City, or Town-Corporate, Headborough, Tything-men, Constable, Collector of Subsidy in any of his Majesties Courts at *Westminster*, or elsewhere, concerning any thing by any of them, by reason of any of their Offices aforesaid, and all others in their Aid or Assistance, or by their Command, act, &c. they may plead the general Issue, and give the special matter for their excuse or Justification in Evidence.

In Replevin Defendant pleads, that the place where, lay in, &c. was the Freehold of the Governours of the School of &c. and so made Conu-
fance, and doth not shew that the Governors were incorporated, it shall be presumed by the Plea. 9 *H.* 6.80. 20 *Ed 4.2.* There one brought Debt by the
name

Shew the Corporation.

name of Alderman, as Successor, but ruled otherwise; for a Succession of a Person of Chattels shall not be presumed without special Allegation, except in case of Abbot and Prior, or the like Corporation known in Law to rest on one Person, as well for Chattels as Inheritance; for otherwise Bishops, Parsons, and the like cannot take Obligations to them and their Successors, but they will go to the Executors. *Hob.*

64. *Arundel's Case.*

N. and *F.* Guardians, and the Fellowship of the Weavers of *N.* brought Debt, and declared, that *Q. Elizabeth* incorporated them by that name of Guardians, &c. it was adjudged a fault in the Declaration, that it did not appear that the Corporation did consist of two Guardians; and there might be more than two, for it saith, they were incorporated by the name of Guardians, and they had omitted the Clause whereby the number was appointed. But by *Hobart*, they needed not to shew how they were incorporated; for the name argues a Corporation, as the like of Cities; and the Plea *nihil debet* requires proof of it. *Hob.* 211. in *Norris* and *Stapes Case*.

Plead.

Pleading as a Bargain and Sale.

In Replevin the Priores of *H.* was seised of the Mannor of *P.* and granted the same by words of *dedi & concessi pro certa pecuniæ summa*, to the Lord Chancellor *Audley*, &c. It was adjudged that the Conveyance was not well pleaded; for it ought to be pleaded as a Bargain and Sale, and not as a Grant, and Judgment was given accordingly for the Plaintiff in the Replevin. 2 *Leon.* 122.

Saith not that it is *antiqua Civitas* Prescription.

One pleads the Custom of *London*, and doth not say *London est antiqua civitas*. If a Man alledge a Custom within a Town, he ought first to prescribe that the same Town is an ancient Town. 2 *Leon.* p. 98.

If Action be brought in Inferior Court against *J. S.* if the Plaintiff declares against him in *custodia*,

dia of the Sergeant and Minister of the Court, and it doth not appear that the Sergeant had any Process or Precept to arrest him, and the Defendant appears, and for this Cause demurs upon the Declaration, and upon this Judgment is given against the Defendant, the Judgment is erroneous; for he upon Appearance pleads this matter. *Law and Dodesworth*, in a Writ of Error of a Judgment in *York*.

It was said by *Hale* Chief Justice, that a Corporation by Prescription may be known by two different names, as of *Burgenses*, and of *Ballivi & Burgenses*. Now if the name of *Ballivi & Burgenses* be a name which they have received within time of Memory, they cannot then prescribe by it, but by their ancient Name till such a time, and then, &c. as in *Dyer*.

Corporation not to prescribe by a Name which they have received within time of Memory.

Debt on Bond of 400 *l.* by Mayor and Commonalty, and Citizens of *London* in *B. C.* Error assigned was, because the Judgment is, That the Mayor, Commonalty and Citizens of *London* should recover the Debt and 6 *l.* Costs, *eisdem Majori & Communitati* adjudged, leaving out (*civibus*) and so no such Corporation, and held to be Error. *Cro. Car.* 574. *Ann Healings Case*.

(*Civibus*) omitted.

The Plaintiffs being a Corporation intitle themselves by a Feoffment, and do not shew Livery to be executed by Letter of Attorney; but *per Cur.* all necessary Circumstances shall be intended to be executed, as well as in a Feoffment pleaded to other Persons. *Cro. Jac.* 411. the Mayor and Commonalty of *Ipswich*, *versus Martin*.

All necessary Circumstances intended to be executed.

If a Mayor and Commonalty plead that they are seised in Fee, they need not say in right of their Corporation, they need not alledge it, 1 *Leon.* 153. Action brought by the Guardian and Fellowship of Weavers; the Book saith they need not set themselves out to be incorporate; the name shews it so of Cities, *Hob.* 211. But against Inhabitants of a Village, a Writ brought by that name that cannot

In jure, &c.

be taken to be other than Inhabitants, the names so shew it.

It is a good Rule in pleading, or a special Verdict in many Cases if by express Averment, or by finding of the Jury it shall be made apparent to the Court, that the true name of the Corporation, and the name in the Lease or Grant are all one in effect by, averment, &c. it will much inforce the matter tho the words have some difference, and the *per nomen* implies in it self an averment that the Mayor and Burgeſſes did make the Lease by the name *Prout*. So in pleading. The Corporation was named, the Abbot of the Monastery *beatæ Mariæ Eborum*, and the Abbot of the Monastery, *beatæ Mariæ extra muros civitatis Ebor'* Now tho the Abbey was *ex'ra muros*, yet in truth it was within *York*, and the Bond was good; the Abbot brought his Writ of Debt by his true name, and in his Count he saith, the Obligation was made to the Plaintiff, *per nomen*, &c. which implies in it an Averment that the Abbey was within *York*, and in substance, as appears by Averment, *dehors*, all is one. *Hobart*.

Averment.

A foreign Attachment in Inferior Court was pleaded in this manner, that by Custom, time out of Mind, whoever levied a Plaint *pro aliquo debito*, against another, upon surmise that a Stranger was indebted to the Defendant, that Process issued forth to attach. It was objected, that it is not said *pro aliquo debito*, which did arise *infra Jurisdiction' curiæ*. *Per Cur.* It need not be express'd, that the Debt did arise, *infra Jurisdiction'*, for perhaps it did not, and that if an Action be brought in such case, and the Debt be laid to be contracted *infra Jurisdiction'* *Cur.* if the Defendant will plead to it he may, but he shall never be admitted to assign for Error, that the Debt did arise *extra Jurisdiction'* *Cur.* But if he had tendered such a Plea, and they had refused it, then it had been Error. 1 *Ventr.* 386.

As

As to pleadings, *Vide* Jurisdictions, Customs, &c. *Sparsim, per tit.*

Ebor' ff. **M**emozand als seilt Terhoofsch
vle pterir coram Dño Rege
ven C. W. p C. E. Altoznd suid & ptulit hic
in Curia ded Dnd Regis nunc ibm quandam
Billam suam ss J. H. & W. H. in custod
Mhari &c. de plito Transgr Et sunt Pleg de
ps seilt Johannes Doe & Richardus Roe que
quidem Billa sequitur in hec verba ff.

The pass for
entering House,
and taking
Goods.

Ebor' ff. C. W. queritur de J. H. & W.
H. in custod Mhari Marefcal Dom Regis co-
ram ipso Rege existen de co qd ipsi 22 die
Junij anno regni Dnd nrd Caroli secundi
Dei Gra nunc Regis Anglie vicesimo septi-
mo vi & armis &c. unam domum cum ostijs
obseratis ipsius C. (Anglice vocat &c.) apud
Richmond in Com ps fregere & intraver ac
unum Textorium Instrumentum (Anglice
a Weavers Loom) cum pertin eid Textorio
Instrumento spectan (Anglice vocat Tack-
lings thereunto belonging) ad valentiam 20 l.
tria Viciatoria (Anglice Weavers Shuttles)
ad valentiam &c. duo Ferramenta (Anglice
Iron pins) ad valenc &c. & und peell Pensor
Lanar (Angl a quantity of Woollen Yarn)
ad valenc &c. ipsius C. in dom sua ps invene
adtunc & ibm ceper & asportaver & in usum
suum pprium converter & disposuer nec non
ipsu C. a possessione & occupatione domus ps p
magnum tempus seilt a pdeo 22 die Junij
anno 27 supdict usq 3 die Februar tunc pr'
sequen custodiver & extra tenuer p qd idem
C. totum pficuum & commodum domus ps p
tor idem tempus totaliter perdidit & amisit
Et alia enormia ei adtunc & ibm intuler
contra pacem dicti Dnd Regis nunc ad
dampnum

dampnum ipsius C. 40 l. Et inde pduc sectam &c.

Et modo ad hunc diem scit die Martis pr^o post Octab Sed Hillarij isto eod Termino usq^{ue} quem diem p^{ro} J. & W. huet licentiam ad villam p^{ro} interloquen^{do} & tunc ad respond^{ere} &c. coram Dom^o Rege apud Westm^{onasterium} ven^{ire} tam p^{ro} C. per Altoz^{um} suu^m p^{ro}dict^{um} quam p^{ro}dice J. H. & W. H. p^{ro} J. C. Altoz^{um} suu^m Et ijs J. & W. def. vim & injuriam quando &c. Et quoad venire vi & armis seu quicquid quod est contra pacem d^{omi}nⁱ D^{omi}nⁱ Regis nunc necnon totum transg^{ressio} p^{ro} superius fieri supp^{ro}dit p^{ro} fractionem & intrac^{on}em domus p^{ro} necnon continuac^{on}em in domo p^{ro} p^{ro} spatium duodecim horar^{um} ac etiam capc^{on} & asportac^{on} p^{ro} Textoris Instrumenti (Anglice Weavers Loom) cum p^{ro}ti^{us} eidem Textorio Instru-mento p^{ro}ti^{us} spectan^{do} vocat^{ur} Tackling thereunto belonging tri^{us} Liciator^{um} (Anglice Weavers Shuttles) duoz^{us} Ferramento^{um} (Anglice Iron pins) & p^{ro} unius p^{ro}cell^{us} Pensozum Lanariozum (Anglice a quantity of Woollen Yarn) die q^{uo}d ipsi in nullo sunt inde culpabiles Et de hoc po^{ss}u^{nt} se super p^{ro}ziam Et p^{ro} C. silit^{er} &c. Et quoad fracconem & intrac^{on}em dom^{us} p^{ro} necnon capc^{on} & asportac^{on} p^{ro} Textoris Instrumenti (Anglice a Weavers Loom) cum p^{ro}ti^{us} eidem Textorio Instru-mento spe-ctan^{do} vocat^{ur} Tackling thereunto belonging) tri^{us} Liciato^{um} (Anglice Weavers Shuttles) duoz^{us} Ferramento^{um} (Anglice Iron pins) & p^{ro} unius parcell^{us} Pensozum Lanariozum (Anglice a quantity of Woollen Yarn) ijs J. & W. die q^{uo}d p^{ro} C. ac^{on}em suam p^{ro} inde s^{er}vis eos here seu manutenere non debet Quia die q^{uo}d ante p^{ro} tempus quo transg^{ressio} p^{ro} dea- tugi^{us} fieri supp^{ro}dit scit ad Curiam Dom^{us} Regis

Regis de Recorde Burgi de Richmond in
 Com p^o 17 die Decembris Anno regni dice
 Dom Regis nunc vicesimo sexto coram Ma-
 jore Recordatore & Aldris Burgi p^o dice apud
 Burgum p^o dice tene quidam H. C. levavit
 quandam querelam sua & l^o p^o fac & de p^o l^o
 transgressi super casum &c. Taliterq^{ue} in
 eadem Curia superinde p^o cessi fuit q^{uo}d per
 eandem Curiam tene 4 die Maij Anno regni
 dec^o D^o Regis nunc vicesimo septimo coram
 Majore & Aldris Burgi p^o apud Burgum p^o
 considerat fuit quod p^o dice H. C. recuperet ver-
 lus p^o fac & l^o sumam quadraginta & quinque so-
 lidozum & quatuor denari p^o damnis suis su-
 stene occasione non p^o formaconis cujusdam
 p^o missionis ipsius & eidem H. face Et p^o dice
 J. & W. ulterius die quod postea & ante
 p^o dict tempus quo &c. scil^{icet} decimo quinto die
 Junij Anno regni dec^o D^o Regis nunc vi-
 cesimo septimo ad requisitionem ipsius H.
 quoddam p^o ceptum extra eandem Curiam tene
 apud Burgum p^o dice secundum consuetudi-
 nem Burgi p^o dice emanabit servien^{ti} ad clavam
 necnon H. M. Ballivo ejusdem Curie spect^{ali}
 alie deputat^e directe p^o quod eis p^o cept fuit quod
 fieri facerent seu unus eorum fieri faceret de
 bonis & catallis p^o dice & p^o dict summam 45 s.
 & 4 d. quos p^o dice H. C. p^o judicium Curie in
 Burgo p^o dice p^o damnis suis sustene occasione
 non p^o formaconis cujusdam p^o missionis ipsius
 & eidem H. face & l^o p^o fac & l^o recuperasset un-
 de idem & l^o convictus fuit sicut constabat de
 Recorde Et quod heret denari illi ad p^o xim^o
 Curiam p^o Burgi p^o dice tenend^o die Martis scil^{icet}
 vicesimo nono die Junij tunc p^o sequen^{ti} ad
 reddend^o p^o fac H. & quod herent ibi p^o cept il-
 lud Quod quidem p^o cept postea & ante p^o dice
 tempus quo &c. Et ante p^o dice p^o Curiam
 fest^o 22 die Junij Anno regni dec^o D^o Regis

Bar by Recove-
 ry in Richmond
 Court.

gis nunc vicesimo septimo sup'dco apud Burgum de Richmond pd' pd' J. H. adtunc undervien ad clavam ejusdem Curie deliberac fuit in debita iuris forma erequend' Et pd' J. & W. ulterius die quod pd' C. W. ante pd' tempus quo transgt pd' supius fieri sup'pōit scilicet ad Curiam dcd Dnd Regis de Recordo Burgi de Richmond in Com pd' 15 die Decemb' Anno regni dcd Dnd Regis nunc vicesimo sexto coram Majore Recordatore & Ald'is Burgi pdice apud Burgum pdice tene quandam querelam suam vsus p'far W. H. de plito transgt sup' casum levabit taliterq; in ead' Cur' supinde p'cess' fuit qd' p eandem Cur' tene eodem quarto die Maij Anno regni dcd Dnd Regis nunc vicesimo septimo sup'dco coram Majore Recordatore & Ald'is Burgi pdici apud Burgum pd' considerac fuit quod pdice W. H. recuperet vsus p'far C. W. sumam sexdecim solidorum & un' denar p mis & custagijs suis p ipsum circa defensionem suam in ea parte fuisse secundum formam Statuti inde edit & p'bis p eo quod pdict C. non fuit psecutus quer suam vsus ipsum W. H. ibm levat Et pd' J. & W. ulterius die quod postea & ante pd' tempus quo &c. scilicet pdice 15 die Junij Anno regni dcd Dnd Regis nunc vicesimo septimo sup'dice ad requisicon ipsius Willi quoddam aliud p'cepte extra eandem Curiam tene apud Burgum pdice secund' consuetudinem Burgi pd' emanabit servien ad clavam ibidem directe p quod eis p'cepte fuit quod levare facerent seu alter eorum levare fecerit de bonis & catallis pdict C. W. sumam 16s. & 1 d. qui pdice W. H. in eadem Cur' adjudicat fuissent p mis & custagijs suis circa defension' in quadam actione transgt sup' casum iuxta formam Statuti inde nup edit & p'bis Et de nar

nat ill herent seu alter eorum heret ad pr'
 Cur p Burgo pd tenens pd dicto die Martis
 scilicet vicesimo nono die Junij tunc pr' sequen'
 ad reddend' pfac' W. H. p mis' & custag' pd
 Et quod herent ibi tunc pcepte illud quod qui-
 dem pcepte postea & ante pd tempus quo &c.
 & ante pd pr' Curiam scilicet pd 20 die Junij
 Anno regni ded' Dnd Regis nunc vicesimo
 septimo sup'dice apud Burgum de Rich-
 mond pd p'dco J. H. adtunc un' servien' ad
 clavam ejusdem Cur' deliberat' fuit in debita
 juris forma ereglen's virtute quorum quidam
 sep'alium pcepte pd J. adtunc un' servien' ad
 clavam ejusdem Cur' & pd W. H. ut assistens
 ipsi J. & in ejus auxilio postea & ante pd
 pr' Cur' scilicet pd 22 die Junij Anno regni ded'
 Dnd Regis nunc vicesimo septimo sup'dice
 in domo pd ostijs ejusdem domus apere ex-
 isten' apud Burgum pd ac infra Jurisdic-
 ejusdem Curie intraver' & pd unum Textorium
 Instrumentum (Anglice a Weavers Loom)
 cum p'tin' eidem Textorio Instrumente spe-
 cial' vocat' Tacklings thereunto belonging &
 tria Liciatoria (Anglice Weavers Shuttles)
 in eadem adtunc existen' virtute pcepti pdice
 ad sece pd H. C. & pdice duo ferramenta
 (Anglice Iron pins) & pdice una parcell' Pen-
 solum Laniariorum (Anglice a quantity of
 Woollen Yarn) in eadem domo adtunc silitur
 existen' virtute pcepte pdice ad sece pdice W.
 H. in executione cepet & asportabit p'out eis
 bene licuit que est ead' transgressio quoad
 fraccionem & intracionem domus pd & conti-
 nuacionem in domo pd necnon capcon' & aspor-
 tacon' pd Textorii Instrumenti (Anglice
 &c.) unde idem C. supius & l'us eos querit
 Et ulterius iidem J. & W. dic' quod pd J.
 ad pd pr' Curiam scilicet pd 29 die Junij Anno

And Execu-
 tion.

diei Dom Regis nunc vicesimo septimo super
 p̄dco tene apud Burg de Richmond p̄d coram
 Majore Recordatore & Aldris Burgi illius
 sep̄al p̄cepte p̄d retornabit quod ipse virtute
 p̄cepti p̄d' ad fece p̄d' H. C. levasset sumam
 45 s. & 4 d. de bonis & catallis p̄fat C. infra
 Burgum p̄d' quos quidem 45 s. & 4 d. idem
 J. parat huius ad eandem Cur ad illos eidem
 H. C. reddend p̄out sibi p̄cepte fuit Ac quod
 ipse idem J. virtute p̄cepti p̄d' ad sectam p̄fat
 W. H. levasset sumam 16 s. 1 d. quos idem
 J. parat huius ad eandem Cur ad illos eidem
 W. H. reddend p̄out sibi p̄cepte fuit Et hoc
 parati sunt v̄ficare unde pet Judicium si p̄d'
 C. ac̄onem suam p̄t inde v̄lus eos here seu
 manuteneere debeat &c.

Et p̄d C. W. dicit quod ipse p aliqua p p̄d
 J. & W. supius in barram p̄litat ab ac̄one
 sua p̄d inde v̄lus ipsos J. & W. hend' p̄cludi
 non debet Quia die quod tempore fracton &
 intracō dom' p̄d ostia ejusdem dom' claus
 fuer (Anglice were shut) & oblerae (Anglice
 locked) & quod iidem J. & W. ostia domus
 illius fregit & in domū p̄d intraver & bona
 & catalla v̄leius men̄onae ceper & asportaver
 modo & forma p̄out idem C. supius versus
 eos queritur Absq̄ hoc quod ostia domus
 p̄d. adtunc aperta fuere p̄out p̄d' J. & W.
 supius p̄litando allegaver unde ex quo p̄d'
 J. & W. transḡt p̄d' face supius fieri cogit
 idem C. petit Judicium & damna sua occasi-
 one transḡt illius sibi adjudicari.

Et p̄d' J. & W. die qd ostia dom' p̄d' tem-
 pore fracton & intracō domus p̄d aperta fu-
 ce put p̄d J. & W. superius p̄litando alle-
 gaver & de hoc ponunt se sup p̄riam Et p̄d
 C. s̄luter Ideo tam ad trians exitum istum
 quam ad exitum inter partes p̄d supius
 junce

juncte bendinde jurat coram Dño Rege apud
Westm die pr' post Et qui
nec &c.

Suff. ff. **W** Illus Johnson nup de Burp. Tresp' & faux
Sed Edmundi in Com pdice Imprisonment.

Bricklayer Willus Patrick nup de Burp.
Sed Edmundi in Com pdice Gen J. P.
nup de &c. & S. W. nup de &c. attach fuer
ad respond Ricō Patrick de plito quare ipsi
simulcum S. F. nup &c. Gen vi & armis &c.
in ipsum Ricm apud Welford in Com pdice
insule fecer & ipsum oberaver vulneraver
maletraxaver ceper & imprisonaver & ipum in
prisona contra Legem & Consuetud Regni
Dñi Regis & Dñe Regine nunc detinuer
& detineri pcuraver & causaver Ita quod de
vita ejus maxime desperabat Et alia enor-
mia ei intulerunt ad grave dampnum ipsius
Ricci & contra pacem Dominorum Regis &
Regine nunc &c. Et unde idem Ricus per
Carolus C. Attorn suū queritur quod pdci
Will Johnson & Willus Patrick Johes Pa-
trick & Simon simulcum &c. decimo septimo
die Aprilis Anno regni Dñi Regis & Dñe
Regine nunc quarto vi & armis (videlt)
Gladijs Baculis & Cultellis in ipsum Ricm
apud Welford in Com pdice insultum fecer &
ipsum oberaver vulneraver maletraxaver
ceper & imprisonaver & ipm ibm in prisona
sine aliqua causa rationabili vel aliqua legli
Warranc aut aliqua justa sive legitima cau-
sa ac contra voluntatem ipsius Ricci & contra
Legem & Consuetudinem hujus Regni Ange-
diū videlt p spacium unius anni tunc pr' se-
quen detinuere & detineri pcuravere & cau-
sare Ita quod de vita ejus maxime des-

perabae & alia enormia &c. ad grave dampnum &c. & contra pacem &c. unde dicit quod deteriores est & dampnum hec ad valenciam 200 l. & inde pduc sectam &c.

Et p^ro^o W. J. p. S. J. Attorn suu vend & defend vim & injur quando &c. Et quoad venice vi & armis necnon vulnerae p^rdice sup^r fieri supposse idem W. J. dicit quod ipse in nullo est inde culpab^r & de hoc pos^r se super priam & p^rdict Ricus scilicet Et quoad p^rdice testis transgressis insule imprisonmente & detencion p^rdice sup^rius fieri supposse idem W. J. dicit quod actio non &c. quia dicit quod Burgus de Burg Sed Edmundi in Com p^rdeo est & a tempore cujus contrarij memoria hominum non existit fuit antiquus Burgus quodq^{ue} p^rdice Ricus octavo die Novembe Anno regni Dⁿi Jacobi Secundi nup Regis Anglie &c. tertio apud Burg Sed Edmundi p^rdice ac infra Jurisdiction Curie de Recordo ejusdem Burgi hic postea mentioⁿae p quoddam scriptum suu obligato^ria concessit si teneri eodem W. J. in vigine libris solvend^r eidem W. J. cum inde requisie fuisset Que quidem vigine lib^r fuere verum & iustum debm ipsius Rici & eidem W. J. ante p^rdice tempus quo &c. necnon eodem tempore quo &c. debie & insolvie fuere (videlicet) apud Burg Sed Edmundi p^rdice infra Jurisdictionem Curie de Recordo Burg illius per quod idem W. J. p recuperatione p^ro vigine lib^r postea & ante p^rdice tempus quo &c. scilicet octavo die Novembris Anno regni dⁿi nup Regis Jacobi Secundi quarto ad Cur ejusdem nup Regis de Recordo adunc tent ad & p Burgo illo in Guibald^r ejusdem Burgi ac infra Jurisdictionem Curie p^rdice coram Martino Spensley Ar^r tunc Aldermano Burgi p^ro ac

Recovery pleaded in inferiour Court.

ac T. M. & R. S. Sed tunc Capital Burgensibus Burgi illius juxta Libertate & Privilegia ejusdem Burgi virtute Literarum Patene Dni Jacobi primi nup Regis Anglie &c. sub magno sigillo suo Anglie sigillat & gerendae apud Westm in Com Midd tertio die Aprilis Anno regni sui quarto Aldermanno Recordatore & Burgensibus Burgi pdict concessa & confirmat implacitavit ipsum Ricum in plito debiti sup demand pdict vigine libi & adtunc & ibid indebit Pleg de ps sextam suam pd Et supinde in eadem Curia taliter prees fuit in plito pd quod postea scit 17 die Octobris Anno regni dcorum Dni Regis & Dni Regine nunc primo ad Curiam de Record eorumdem Regis & Regine adtunc tene ad & p Burgo pdco in Guihals ejusdem Burgi ac infra Jurisdic Cur illius coram pfat T. M. tunc Aldro Burgi pd ac Iosepho W. Armig tunc Recordatore ejusdem Burgi ac pdict R. S. & W. Spensley duobus Capitalibus Burgensibus Burgi illius virtute Literarum Patene pd ibid tene idem W. J. p considerationem ejusdem Curie recuperabit & lrus pfat Ricum tam pd debm vigine libi quam centum solidos qui eidem W. J. in eadem Curia adtunc & ibid adjudicat fuer p damnis suis que fuit occasione detentionis debiti illius unde convictus est put p Record & Process inde in Curia Burgi illius apud Guihals ejusdem Burgi residet plenius liquet & apparet Quod quidem Judicium adhuc in suis plenis roboze & effectu reman minime reberlat adnullat sive satisfacere ac sup Judicium illud postea & ante pd tempus quo &c. scit ad Curiam de Record pd tene coram Samuele Grobe Sed tunc Aldro Burgi pdict & pfae

tunc Capitalibus Burgensibus Burgi illius
 apud Dunghald p̄dice infra Jurisdictionē ejus-
 dem Curie decimo quarto die Aprilis Anno
 Regni Regis & Regine nunc quarto supra-
 dicto virtute Literarum Patene p̄dice eman-
 abit extra Cur' ill' ad p̄secue p̄d' W. J. quod-
 dam p̄cepe ejusd' Cur' p̄tate J. Parnel & S. W.
 & cuidam Willo Smith tunc servien' ad cla-
 vam ac Ministris ejusdem Curie directe per
 quod quidem p̄cept' eis & cuilibet eorum con-
 junctim & divisim per eandem Curiam p̄cepe
 fuit quod caperent seu eorum unus caperet
 p̄d' Ricm' si invener' foret in Burgo p̄dict' Ita
 quod herent corpus ejus ad tunc primam
 Curiam de Recordo ibidem tenend' scilicet 21
 die tunc instantis Aprilis ad satisfaciend'
 p̄dicto Willo J. de debito & damnis p̄dict' sicut
 p̄fere recuperat quod quidem p̄cept' postea &
 ante retorn' ejusdem necnon ante p̄dice tem-
 pus quo &c. scilicet 16 die Aprilis Anno quarto
 supradicto apud Burgum p̄dice ac infra Ju-
 risdictionē Curie p̄dict' deliberat' fuit p̄ p̄dice W.
 J. p̄dictis J. P. & S. W. tunc servien' ad cla-
 vam Burgi p̄dicti ac Ministris Cur' p̄d' existend'
 in forma juris crequend' virtute cujus qui-
 dem p̄cepe iidem J. P. & S. W. ad requisi-
 tionem ipsius W. eidem J. P. & S. W. ibi
 face' apud Burg' p̄dice ac infra Jurisdic-
 tionem Cur' p̄dice postea & ante retorn' p̄cepe
 p̄dice scilicet eodem 16 die Aprilis Anno quarto
 supradicto manus suas sup eundem Ricm'
 molliiter imposuer' ad ipsum ex causa p̄dice
 arrestand' ac ipsum Ricm' ad tunc & ibid' ex
 causa illa ad sectam ipsius Willi de p̄dice
 p̄lito & ad requisitionem ipsius W. J. repe-
 runt arrestaver' & imprisonaver' & ea de causa
 in p̄lona ibid' (scilicet) in communi Gaola e-
 jusdem Burgi sub custodia p̄dice Samuel
 Gove

Grobe Aldri ejusdem Burgi posuerunt & deliberaverunt in executione p debito & dampnis pdice. Et abinde p pdice tempus in narratione pdice superius mentionae pdice tunc Aldrus Burgi pdci pfac Ricm in executione p debito & dampnis pdice detinuit put ei bene licuit que quidem mollis imposuit mand ac arrest & imprisonam pd ad psecue & requisie ipsius W. J. ut pferet facere sunt idem resid transgressi imprisonament & detencion pdice unde pdice Ricus superius Blus eundem W. J. queritur Absq hoc quod idem W. J. est culpab de captione arrestatione imprisonament & detencion pdice apud Welford pdice seu alie extra Burgum pdice & Jurisdiction ejusdem Curie seu aliter vel alio modo quam ut supdice est Et hoc parat est significare unde per judicium si pdice Ricus actionem suam pdice inde Blus cum here debeat &c.

Et pdice Ricus Patrick petit auditum Plea. precepti de Capias ad satisfaciend in plito ipsius W. J. mentionae & spec Et ei legit in hec verba: Gulielmus & Maria Dei Gra Anglie Scotie Francie & Hibnie Rex & Regina fidei Defensores &c. J. P. S. W. & Willo Smith Serbient ad clavam ac ministr Curie de Record Burgi nostri de Burgo Sed Edmundi in Com nrd Suff. saltem vobis & cuilibet vestrum conjunctim & divisim precipimus quod capiatis seu unus vestrum capiat Ricm Patrick si invenerit fuit in Burgo pdice Ita quod heat corpus ejus coram Aldermanno Recordatore & Capitalibus Burghensibus Burgi pdci ad Curiam de Recordo p Burgo pdice apud Guibald ejusdem Burgi die Jovis vicesimo primo die Aprilis instanti ad satisfaciend Willo Johnson tam de quodam debito 20 l. quod id Wille in Curia pd coram

coram Aldro Recordatore & Capital Burgen-
sibz Burgi pdice apud Guithald' ejusdem
Burgi recuperabit s'us cum quam de centum
s'is qui eidem Willo in eadem Curia adju-
dicat fuit p dampnis suis que fuit occasio-
ne detentionis debi illius unde convictus est
Et tunc heas ibid hoc pcepe Samuele Grobe
Scilicet Aldro Burgi pdice 14 die Aprilis An-
no regni nostri quarto Quo leao & audito
idem Ricus Patrick quoad pdice p'litu W. J.
quoad resid transgressu insule imprisonae
& detentionis pdice ut p'fertur supius p pdice
W. J. in hac p'litae dicit qd ipse p aliqua p
pdice W. J. supius inde p'litando allegae
ab actone sua pdice inde s'us eundem W. J.
habend p'cludi non debet Quia dicit quod
ad aliquod tempus post 17 diem Octobr
Anno regni Dni Gulielmi & Dni Marie
nunc Regis & Regine Anglie &c. primo quo
die Judiciu in p'litu ipsius Willi Johnson
recitat & mentonae reddit fuit s'us p'fate
Ricm Patrick & ante pdice 14 diem Aprilis
Anno regni dictoꝝ Dni Regis & Dni Regi-
ne nunc quarto sup'dicto quo die pcepe de Ca-
pias ad satisfaciend in p'litu p'dci Willi
Johnson mentonae & recitat emanabit nul-
lum Judiciu sup aliquod pcepe de Scire
faci eman' extra pdice Curiam Burgi pdice
de & sup Judicio pdice reddit fuit nec unqua
fuit aliquod al pcept mandae sive p'fate de
& sup Judicio pdict p'secue sive continuae
s'us pdice Ricm Patrick extra vel p eandem
Curiam Burgi p'dci inter pdice 17 diem
Octobr Anno quarto sup'dict & pdice 14 diem
Aprilis Anno quarto sup'dice Et hoc paratus
est s'ficare unde ex quo pdice W. J. resid trans-
gressu insule imprisonment & detention pdict
p p'fat W. J. ut p'fertur fieri cogit idem
Ricus

Ricūs Patrick pet Iudiciū & dampna sua Demur.
p̄dice Olus p̄fāt W. J. occasione inde sibi ad-
judicari &c.

Et p̄dice W. J. die qđ p̄lita p̄d p̄d Ricū
Patrick quoad resis̄ transgress̄ insult impri-
sonamene & detencon p̄dice ut p̄fertur supe-
rius replicando p̄lita minus sufficien̄ in le-
ge existit ad p̄dice Ricūm acconem suam p̄d
Olus eundem W. J. hend̄ manūtenend̄ qđq̄
ipse ad p̄litum illud modo & forma p̄dict re-
plicando p̄lita necesse non habet nec p̄ legem
terre tenetur respondere Et hoc paratus est
dificare unde p̄ defectu sufficien̄ replicaconis
ipsius Ricū in hac parte idem W. J. petit
Iudiciū & qđ p̄d Ricus ab accone sua p̄d
quoad resis̄ transgr̄ insule imprisonamene &
detencon p̄dice ut p̄fertur verlus eum p̄clu-
dae &c.

Et p̄d Ricus ex quo ipse sufficien̄ materiā
in lege ad accon suam p̄d quoad p̄d resis̄
transgr̄ insule imprisonamene & detencon p̄d
ut p̄fertur Olus Will Johnson hend̄ manūte-
nend̄ lupius replicand̄ & allegat quam ipse
paratus est dificare quam quidem materiā
p̄d W. J. non dedic̄ nec ad eam aliqualit re-
spond̄ sed verifikationem ill̄ admittere omnino
recusat ut prius per Iudiciū & dampna sua
detractone p̄d resis̄ transgr̄ insule impriso-
nament & detencon p̄dice p̄fertur sibi adju-
dicari &c.

Et p̄dict W. Patrick J. P. & S. W. per
J. W. Accorū suū ven̄ & defens̄ vim & inju-
riam quando &c. & nihil in barram acconis
p̄dice Ricū Patrick p̄dice inde die p̄ qđ idem
Ricūs Patrick remanet inde verlus p̄fāt
Will Patrick J. P. & S. W. inde indefens̄
ob quod idem Ricūs Patrick dampna sua oc-
casione inde verlus p̄fāt W. Patrick J. P.
&

¶ S. W. recuperare debeat &c. set quia nescitur an p̄dict W. J. convincatur de & sup materia in lege unde ipse idem Willus Johnson & p̄dict Ricus Patrick supius in Iudicio Curie hic se posuere necne Et quia nescitur etiam an idem Willus de & sup materia in exit possit inter p̄fat Ricum Patrick & p̄dice W. J. p priam triand silitur convincatur necne Et si convincatur conveniend & necesse est quod unacum fiat assessamene dampnoꝝ tam verus p̄fat W. J. quam verus p̄fat W. P. J. P. & S. W. p transgꝛ insule & imprisonment in narratōe p̄dict supius spec Ideo tam quoad triand exitum p̄dice inter p̄fat Ricum Patrick & p̄dict W. J. supius in forma p̄dice ut p̄fertur junct p priam triand quam ad inquirend de dampnis p̄dice verus p̄fat Will Patrick J. P. & S. W. cesset inde p̄cess quousq; p̄dice materia in lege unde p̄dict Ricus Patrick & p̄fat W. J. supius in Iudicium Curie hic supius se posuer legitimo modo termince Et quia Iusticiarij hic se advisare volunt de & sup materia in lege unde p̄dice Ricus Patrick & p̄fat W. J. in Iudicium Curie hic supius se posuere priusquam Iudicium inde reddant dies inde dat est p̄fato Ric Patrick & p̄dice W. J. hic usq; in de audiend inde Iudicio suo Et qd idem Iusticiarij hic inde nondum &c.

Civitat' **R.** D. nup de Civitate Wigorn in
 Wigorn Com Civitatis pdict Clothier
 Thomas Winton nup de Civitate Wigorn
 in Com Civitatis pdict Clothier Ricus
 Morris nup de Civitate Wigorn in Com
 Civitatis pdice Clothier Johes Aldern nup
 de Civitate Wigorn in Com Civitae pdice
 Clothier & Robtus Burt nup de Civitate
 Wigorn in Com Civitatis pdice Clothier
 attach fuer ad respondend Ricu Adney de pli-
 to quare ipsi simul cum Samuele Morris nup
 de Civitate Wigorn in Com Civitat pdict
 Clothier & Johanne Baker nup de Civitat
 Wigorn in Com Civitae pdict Brasier vi &
 armis domum ipsius Ricu Adney apud Civi- Trespass for ra-
 tat Wigorn pdict freger & intraver ac diver- king Goods.
 sa bona & catalla ipsius Ricu Adney ad va-
 lentiam centum libraru adtunc & ibm nup
 invent ceper & asportaver Et alia enozmia
 ei intuler ad grave dampnum ipsius Ricu
 Adney & contra pacem Dnd Regis nunc Et
 unde idem Ricus Adney p Thomam Cwit-
 terp Attozn suu querit qd po Ricus Vernon
 Thomas Winton Ricus Morris Robt Burt
 & Johes Aldern simul cum &c. decimo die
 Julij Anno regni Dnd Regis nunc tricesimo
 quinto vi & armis &c. domum ipsius Ricu
 Adney apud Civitae Wigorn freger & in-
 traver ac diversa bona & catalla videlicet unu
 Lectu pulvinar unu Cultricam Laneam
 (Anglice Flock-bed) unu Cervicale Pulvinar
 (Anglice Feather-bed) duas Stozias (An-
 gllice Bedmats) duas Duodenas Crinales
 (Anglice Rolls) duos Abacos (Anglice Side-
 Cupboards) unu Vestrarium (Anglice Stan-
 ding Press) quadragine pondera Stamin
 (Anglice Warp) quadragine pondera Sub-
 tegmen

regimen (Anglice Woorff) und Ollulam (Anglice a Pipkin) octo Dolia cervitie illupilae septem Cupas (Anglice Tubs) una pecia Panni Lanci und Ollam Sinapinam (Anglice a Mustard-pot) ipsius Ricci Adnep ad valenciam &c. adtunc & ibm nup inveni ceper & asportabet & alia enormia &c. ad grave dampnum &c. & contra pacem &c. unde dicit quod deteriores est & dampnum habet ad valenciam ducentarū librarū & inde pduc lectam &c.

Et pō Ricus Vernon Thomas Winton Ricus Morris & Iohes Aldern p Iohem Alep iud Attorn suū & pō Robtus Burt p Georgium Turtley Attorn suū ven & defend vim & injuriam quando &c. Et pduc Ricus Vernon Thomas Winton Ricus Morris & Iohes Aldern quoad venire vi & armis die quod in nullo sunt inde culpabil Et de hoc pon se sup pziām Et pō Ricus Adnep inde filie & quoad fraccōm & intracōm domus pō & captonem & asportationem pō pecie Panni Lanci supius fieri suppōie iidem Ricus Vernon Thomas Winton Ricus Morris & Iohes Aldern die qd pō Ricus Adnep Actionem suā pdcam inde vsus eos here non debet quia die quod Civitas Wigorn est & a tempore cuius contrarij memoria hominum non existit fuit antiqua Civitas huius Regni Anglie quodq; infra eandem Civitatem hetur & a toto tempore supradicto hebatur quedam Curia de Recordo dei Dnd Regis nunc & Progenitorū suorū Regum & Reginaū Angl tenē coram Ballivis & Alderman Civitatis pō usq; scdum diem Octobi Anno regni Dnd Jacobi nup Regis Anglie decimo nono & Scotie quinquagesimo quinto & postea coram Magore Recordatore & Aldermanis

Recovery pleaded in Worcester Court.

mannis Civitae p̄d p tempore existēd vel
 eorū aliquibz tribz vel pluribz eorū de oibz
 actionibz psonalibz quibuscunq infra eandem
 Civitatem emergēd quodq̄ diu ante p̄dice
 tempus quo sup ponitur fractionem & intra-
 tionem domus p̄d & capconem & asportacionem
 p̄dice p̄cie Wanni Lanci supins fieri suppōie
 scilicet 7^o die Augusti Anno regni dēd Dnd Re-
 gis nunc tricesimo quarto in p̄d Curia de
 Recordo dēd Dnd Regis nunc Civitae p̄dice
 tenē in Guithald Civitae p̄dice coram Geo-
 rgij Solley Armig tunc Majore Civitae &
 Thoma Street Mil tunc Recordatore ejusdem
 Civitae & Jacobo Higgins Cōzo Solley Ed-
 mundo Pitt & al tunc Alderman ejusdem
 Civitae scēdm consuetudinem illius Civita-
 tis quidam Robtus Burt in pp̄ia psona sua
 venē & adtunc & ibm scēdm consuetudinem
 Civitatis p̄dice levabit quandam querelam
 suam p̄lus p̄d Ricm Adnep in p̄lito debiti
 decem librarum & adtunc & ibm petijt p̄ces
 Cui p̄d p̄lus p̄fāe Ricm Adnep ad lectam
 ipsius Robti Burt in loquela p̄dice sibi fa-
 ciend scēdm consuetudinem Civitae p̄dice &
 ei adtunc & ibm concedebat sup quo adtunc &
 ibm scēdm consuetudinem Civitae p̄dice a
 toto tempore sup̄dict usitat & approbat p̄cepe
 p eand Cui dēd Dnd Regis in Civitae p̄d
 Serbiene ad clavam ejusdem Civitae quod
 attoch seu &c. p̄d Ricm Adnep p corpus sive
 p bona & catalla sua Ita quod esset ad p̄r
 Cui dēd Dnd Regis Civitae p̄dice apud
 Guithald Civitae p̄d coram p̄fāe Majore Re-
 cordatore & Alderman Civitae p̄dice tenens
 ad respondend eidem Robto Burt de p̄des
 p̄lito debi Idem dies tunc dat fuit eis Ricm
 Adnep p eandem Curiam ibm &c. Taliter in
 ead Cui Civitae p̄d in loquela p̄d p̄cessit fuit
 quod

quod postea & ante p̄d tempus quo &c. scilicet
ad Curiam dcd Dni Regis de Recordo Civita-
tis p̄d apud Guibald p̄d coram p̄fato Majore
Recordatore & Aldris Civitatis p̄d die tunc
secundo die Octobr Anno regni Dni Regis
nunc tricesimo quarto supradice tunc p̄eand
Cur considerat fuit qd̄ p̄dictus Robtus Burt
recuparet & lras p̄fate Ricm̄ Adney p̄d debitum
sum̄ 10 l. & dampna sua occone detencionis
debi illius ad 13 s. & 6 d. eid Robto Burt ex
assensu suo p̄eand Cur adjudicat sup quo qui-
dem iudicio & lras p̄fat Ricm̄ Adney in forma
p̄d reddit p̄d Robtus Burt postea & ante p̄d
tempus quo &c. scilicet ad eand Cur dcd Dni
Regis de Recordo Civitatis p̄d apud Guibald
p̄deand coram p̄fato Majore Recordatore &
Aldris Civitatis p̄d p̄deo secundo die Octobr An-
no tricesimo quarto supradice petijt executione
& lras p̄d Ricm̄ Adney p̄ debito & dampnis p̄d
p quod p̄ eand Cur tunc & ibm p̄cepe fuit
servienti ad clavam ejusdem Civitatis seu &c.
quod de bonis & catallis p̄d Ricm̄ Adney in-
fra Civitatis p̄dict fieri fac tam p̄d debitum
decem librarum quam p̄d tresdecem solidos
& sex denar p dampnis suis & denar ill he-
rent seu &c. ad pr' Cur Civitatis p̄d apud
Guibald Civitatis p̄d coram p̄fato Majore Re-
cordatore & Aldris Civitatis p̄d tunc tenens
ad reddend' p̄fato Robto de debito & dampnis
p̄dictis quod quidem scriptum postea & ante p̄d
tempus quo &c. & ante ad tunc pr' Cur Civi-
tatis p̄d scilicet eod' secundo die Octobr Anno tri-
cesimo quarto supradico apud Civitatis Wigorn
p̄d eid' Thome Winton tunc un' servien' ad
clavam & ministr Cur p̄d existens delibat
fuit in forma juris exequend' virtute cujus
quidem p̄cepe postea & ante p̄d pr' Curiam
Civitatis p̄d scilicet eodem secundo die Octobr
Anno

Anno tricesimo quarto supradicto apud Civitatē Wigornie p̄d' ac infra Jurisdictionē Cui p̄d' idem Thomas Winton & p̄d' Ricus Vernon Ricus Morris & Iohes Aldern p̄p̄e ipsius Thome Winton & in eius auxilium simul cum p̄d' Thoma Winton domū p̄d' in narratōne p̄d' menconat ostio ejusdem domus ad tunc apere existēd ad p̄dictā peciam Panni Lanei p̄dci Ricū Adney ibm existēd in executione p̄ debito & dampnis p̄d' capiend' & seiscand' intraver' & eandem peciam Panni Lanei ut bona & catalla p̄d' Ricū Adney p̄pria in domo p̄d' invēnt in executione p̄ debito & dampnis p̄d' ceper' & asportaver' put eis bene licuit que quidem intratō domus p̄d' & capto & asportatō p̄dice pecie Panni Lanei ex causa p̄dca & in forma p̄dict facti sunt eadem fractio & intratio domus p̄dce & captio & asportatio p̄dict pecie Panni Lanei unde p̄d' Ricus Adney supius se modo queritur absq̄ hoc quod ipsi iidem Ric Vernon Thō Winton Ricus Morris & Iohes Aldern sunt culpabiles de transgressionē p̄dca p̄dco decimo die Julij Anno tricesimo quinto supradicto vel ad aliquod tempus post p̄dict secundum diem Octobr' Anno tricesimo quarto supradicto modo & forma put p̄dict Ricus Adney supius inde versus eos querit Et hoc parati sunt verificare unde p̄e Judicium si p̄dice Ricus Adney actionem suam p̄dice quoad fractiōē & intratiōē domus p̄dict & captiōem & asportatiōem p̄dice pecie Panni Lanei versus eos here debeat &c.

Et quoad fractiōē & intratiōē domus p̄dce & captiōem & asportatiōem p̄dcoꝝ residuū bonoꝝ & catalloꝝ in narratōne p̄dice specificat supius fieri suppōit iidem Ricus Vernon Thomas Winton Ricus Morris & Iohes

Hes Aldern dic quod actio non &c. and plead, as before, That the City of *Worcester* is an ancient City, &c. and that the said *John Aldern* levied a Plaint there against the said Plaintiff *Richard Adney* in Debt of 40 *l.* and recovered against him, and so had Execution by *Fieri fac'* against the said Goods residue *secundo die Octobr' Anno tricesimo quarto*, and traverse as in the other. *R. B.* one other of these Defendants, as to the piece of Linnen-Cloth aforesaid, pleads as the other, That he levied a Plaint of Debt of 10 *l.* against *Richard Adney*, and a recovery in the said Court and Execution *eidem secundo die Octobr' Anno tricesimo quarto* *sup'dice*, and traverseth *ut supra*.

Et p'd Ritus Adney dicit q'd ipse p aliqua p p'dcos Ritusum Vernon Thomam Winton Ritusum Morris Johem Aldern & Robrum Burt supius p'titendo allegat ab actione sua p'd inde *abus* eos hend' pcludi non debet Quia quoad p'd p'titum p'dice Riti Vernon Thome Winton Riti Morris & Johis Aldern quoad fractionem & intracō domus p'dice & cap'tonem & asportacionem p'dice pecie Panni in narracone p'dict' superius menconae idem Ritus Adney dicit quod p'dict' Ric Vernon Thomas Winton Ric Morris & Johes Aldern die & anno p'dice in narracone supius specificat apud Civitat' Wigorn' p'dice de injuria sua p'pria & absq' aliqua tali causa p ipsos supius p'titendo allegat domum ipsius Ric Adney p'dict' freger' & intraver' & p'dict' peciam Panni Lanei adtunc & ibm invene ceper' & asportaver' modo & forma put idem Ritus Adney supius in nar' inde allegabit Absq' hoc quod hetur tale Recor'd' recuperacionis debi & dampnoꝝ p'dcoꝝ *abus* ipsum Riti Adney in p'dict' Curia Civitatis Wigorn'

gord p'dice remanend quale p'dict Ricus Vernon Thomas Winton Ricus Morris & Johannes Aldern supius allegaver. Et hoc parat est verificare unde per Iudicium & dampna sua occasione fraccionis & intracionis domus p'dict & capcionis & asportacionis p'dice pecie Panni Lanei in narracione p'dict supius specificae versus p'fat Ricum Vernon Thomas Winton Ricum Morris & Johem Aldern inde sibi adjudicari.

Et quoad p'dict plitum p'dicoꝝ Ricu Vernon Thome Winton Ricu Morris & Johis Aldern quoad fraccionem & intracionem domus p'dict & capcionem & asportacionem p'dict resid' bonoꝝ & catalloꝝ p'dice in narracione p'dica superius silitur mentionat idem Ricus Aldney dicit ac. de injuria sua p'pria absq' tale causa (put sup'ia) and traverseth the Record, as before.

Et quoad plitum p'dice p'dict Robti Burt quoad fraccionem & intracionem domus p'dict & capcionem & asportacionem p'dict pecie Panni Lanei idem Ricus Aldney dicit p'cludi non debet quia dicit qd de injuri sua p'pria, and traverseth the Record, as in the other.

Et p'dice Ricus Vernon Thomas Winton Ricus Morris & Johannes Aldern quoad fraccionem & intracionem domus p'dict & capcionem & asportacionem p'dice pecie Panni Lanei in narracione p'dice superius mentionat superius fieri supplicat ut prius dicit quod hetur tale Recordu' recuperacionis debi & dampnoꝝ p'dict s'lus p'dice Ricum Aldney in p'dice Curia Civitatis Wigornie p'dice remanend qual ipsi idem Ricus Vernon Thomas Winton Ricus Morris & Johannes Aldern supius inde allegaver. Et hoc parati sunt s'ficare p' Recordu' illud. And plead the same as to the residuum bonorum.

And *Burt* pleads, *habetur tale Record* &c. *Ideo p̄deo Ricus Vernon Thomas Winton Ricus Morris & Iohes Aldern* heant *Record* illud hic in *Carta* *Secd* *Hillarij* suis *piculis* idem *dies* *dae* est *partibus* *p̄dict* hic &c. Et quoad *triand* *sepales* *exitus* *inter* *partes* *p̄dice* *supius* *juncē* *p̄cepe* est *Vi-*
recomie qđ *venire* *fac* &c.

Note, The Plea is not good.

1. He shews the Court was held *coram Ballivis*, and then *coram Majore*, &c. and shews not how the *Stile* came to be altered.
2. Pleads *Actions* of *Debt*, and shews not that the *Debts* arise *infra Jurisdictionem Cur*?
3. Shew *Provisoe* by *Attachment per corpus* *sive catalla*, which is not good.
4. *Traverse* is ill; for the *Trespas* is laid the 10th of *June* and the 2d of *October*, and the *Traverse* is *absq; hoc*, &c. 10 *Junij* *vel al' quod tempus post 2 Octob'*, whereas he ought to *traverse* all times *ante emanationem*, &c. *vel post Retorn'*.

The Plaintiff's *Replication* is ill. *De injuria sua propria*, &c. *absq; hoc quod habetur al' quod tale Record*, which is a double *Traverse*.

But the Plaintiff having well declared, and the Plea being ill, the Plaintiff ought to have Judgment, though the *Replication* be ill; and so the Plaintiff had Judgment.

C A P. X.

How, and in what things, and to what purpose a Corporation may Prescribe or not.

The Corporation of Dublin to recover three pence per Pound of all Merchandises. Court of Chancery in London by Prescription. Prescription for Common. Prescription for Wharfage in Queen-hyth, pleading by way of Custom and not Prescription. A Corporation, how to prescribe. A thing may be good by Prescription, tho not by Grant. Cannot prescribe to be discharged of the Annual Custom, a Revenue of the Crown. A Corporation, how to prescribe. Que Estate, how to be pleaded. Vide Pleading.

IT is a good prescription for the Corporation of *Dublin*, that they are Owners of the Port of *Dublin*, and that they maintain Perches in the said River, and direct the Ships in the deep Channel, and that they maintain the Key and Crane, and that in consideration of this they prescribe to receive of all Merchandizes of the Port three Pence in the Pound, &c. Here is *Quid pro Quo*, and so it is a good Prescription. 2 *Rol. Abridg.* 265.

A Corporation prescribed to arrest a Man upon suspicion of Felony, and to imprison him for three days, and after to carry him to the next Goal. This is against reason. 22 *Ed.* 4. 43.

The Lord Mayor of *London* may prescribe to have a Court of *Chancery* in *London*, of matters Court of *Chan.* tryed in the Court of the Sheriffs of *London*, altho cery by *Pre-* such Court cannot be granted by the Kings Letters scription. Patents. 2 *Rol. Abridg.* 266.

for Common.

Corporation
aggregate.
Persons inter-
ested in the Re-
venues and
Profit.

A Corporation may prescribe to have Common in Gross, for the benefit of their particular Members, but not for Common in Gross without Member. But they make it for Beasts *Levant* and *Couchant*. For a Corporation may prescribe for the benefit of their particular Members, as well as a natural Person may prescribe for Common, or easement for himself and his Tenants; for though a Corporation aggregate, is a thing of imagination only, having no Body or Soul, yet the Law takes notice that the natural Person, Members of the Corporation, upon which the Corporation consists, are not Strangers to the Corporation, but that they are Persons interested in all the Revenues and Privileges of the Corporation, of which they are Members,
1 *Sand.* 343. *Mellor and Spatman.*

Queen-hyth.

Defendant in Trespass for taking away a bag of Nutmegs, pleads, That the Mayor and Commonalty of *London*, time out of Mind, were seised of a Wharf called *Queen-hyth*, and have used to take for Goods laid upon the said Wharf, to be conveyed from thence by Water, of Persons not lawfully discharged thereof, Wharfage, (*viz.*) *per Burden*, and to Distrain, &c. The Plaintiff in his Replication confesses the Bar, and lays it, that within the said City there was, and time out of Mind, had been a Custom that all the Freemen of the said City had been, and ought to be discharged of the payment of Wharfage for their Goods, and avers, that he was a Freeman of the said City. Defendant denies the said Custom. *Per Hobart*, and the Court, as the Defendant pleads it for the City, it is a mere Prescription in the Corporation, and if he had joyned unto it (as he ought to have done) the point of discharge of Citizens expressly (as he did generally) under the name of Persons discharged, it had been a mere Prescription throughout, and so pleaded. And it being shewed so of the other side, its a
breach

branch of the said Prescription; but yet it's true, that being pleaded apart by it self by the Inhabitants, it must be pleaded by way of Custom, and not by way of Prescription, not because of the nature of the thing, but because the Freemen cannot prescribe in their Persons, and therefore are allowed to lay a Custom for their discharge; so that naturally Prescription, or a thing prescriptible is so to be laid where by Law it may be, and not by way of Custom; and where it cannot be by Law, and therefore is pleaded by way of Custom, the nature of the thing is not changed, but remains still a Prescription in its kind, tho it be allowed to be pleaded by way of Custom for necessity sake, and matter of discharge may be laid by way of Custom, for that it is not an Interest but an Exemption. *Hob. 86. Day and Surage.*

15 *Edw. 4. 29, 32.* The Mayor of *Coventry* was directed to prescribe thus. By the Mayor and Citizens for the Inhabitants, which placeth the Interest in the Corporation, tho the Inhabitants have Interest thereby. Corporation, how to prescribe.

Where the Prescription is to Houses, they must be said Ancient, but not so where the Prescription is by Corporation; and tho the Inhabitant cannot prescribe yet he may have the benefit of it. 3 *Kebl. 248.*

Quo Warranto was brought against the Corporation of *Boston* in *Lincolnshire*, and they by Prescription demand Toll-thorough, in consideration of the reparation of Bridges, and pavements of their Street, and reparation of Sea Banks. *Per Cur.* Tho Toll-thorough simply may not be claimed, yet when it is upon consideration it is good, so Toll-turn; they also claim the forfeiture of foreign bought and foreign sold, and that it was held that this is good by Prescription, tho not by Grant; they also claim to make Orders, and for breach to com-

Good by Prescription, tho not by Grant.

mit, but this is not good. *Sir Thomas Jones* 162.

Cannot pre-
scribe to be dis-
charged of the
annual grand
Custom.

A Corporation cannot prescribe to be discharged of the ancient grand Custom, nor to receive it, for that it is an annual Revenue of the Crown. *2 Rol. Abridg.* 264.

Action on the Case. Supposing that the Governor and the Poor of the Hospital of the *Holy-Trinity in Greenwich*, of the Foundation of *Henry Earl of Northumberland*, was seized in Fee of an House in the Parish of *St. Martins in the Fields*, and that he and all those whose Estate in the said House have had a Foot-way from the said House to, &c. and let the said House to the Plaintiff for Years: That the Defendant erected a Gate cross. Verdict *pro Quer.* It was moved in arrest, that the Declaration was not good, because it is shewed that the Corporation, and all those whose Estate, &c. have had, &c. whereas a Corporation cannot Pre-scribe but in him and his Predecessors. Also one cannot plead a *Que Estate* without shewing how by Deed, for they cannot have it without Deeds. But *per Cur.* the Action is brought by Lessee for Years, who hath not the Deed; and it is but a conveyance to the Action, which is grounded upon the Disturbance done to his Possession; but if he had claimed Rent or Common in Gross, which cannot pass without Deed, it had been otherwise; for there he could not plead *Que Estate* without shewing the Deed how he came by the Estate. *Cro. Jac.* 673. *Slackman and West.*

How Corpora-
tion to pre-
scribe.

Que Estate
how to be
pleaded.

The Mayor of *London* may prescribe to have a Court of *Chancery* in *London*, of matters tryed in the Courts of the Sheriffs of *London*, altho such Courts cannot be granted by Letters Patents of the King. *2 Rol. Abridg.* 266. *Andrews and Webb.* But it is not so as to the Mayor of *York.*

C A P. XI.

Grants by, or to a Corporation.

What things a Corporation cannot do, but by Deed or not. Attorn. Surrender, Acceptance of Rent. The Bailiff in Assize of Fresh Force cannot appear without Warrant in writing. Cannot Licence one to take their Trees without Deed, nor send one to make a claim to Land, nor command one to enter for a Condition broken. Of Conveyances of Land by a Master and Fellows of a College, Dean and Chapter, &c. Stat. 13 Eliz. c. 10. Construction of the Statute, 18 Eliz. c. 2. Fine and Non-Claim if a Bar. How others acknowledge a Deed to be inrolled. Letters Patents void, the King not being well apprised of his Estate. Mayor, &c. not named by their Name. Difference between a Corporation Aggregate and Sole. If Grant to a Corporation that wants a Head, how good, or not. Name of Baptism mistaken. Grant void for incertainty. Upon Grant of half yard Land to a Corporation, how they must make Election. Grants, Leases made by a Corporation. No delivery necessary to a Deed of a Corporation. Corporation is not to be seised to anothers Use. Capacity to take, but not to hold. Letter of Attorney to take Possession. Of Parties to the Indenture. A president of the Grant of an Annuity granted by a Corporation, in consideration of good Service done. Leases and Grants of Colleges and Hospitals when they shall be good or not, and how to be qualified within the Statutes, illustrated by several Cases of devises to Corporations.

MUST by Warrant of Attorney enter for a Condition broken. 4 Rep. 119. b.

IF

Attorn.

If Mayor and Commonalty of *London* had Estate for Life, of *J. S.* if the Mayor and Commonalty attorn to the Grant of the Reversion, the Law requires it shall be by Deed, though the Grantee does not claim in by those that Attorn, or that Attornment is but a Consent, yet in pleading the Deed of Attornment ought to be shewed. 6 Rep. 38. b.

Surrender.

A Corporation aggregate of many, cannot make express surrender without Deed in writing under their Seal, yet they may by Act in Law surrender their Term without writing. The Case was upon Information of Intrusion, and special Verdict upon it. Queen *Elizabeth* demised to the Churchwardens of *St. Saviours Church* in *Southwark* (who were incorporated by the Statute 32 H. 8.) the Rectory of it for 21 Years, and after they accept a new Lease for 51 Years, there need not be actual surrender in this case, and the words *modo habentes & ad presens possiden'* &c. Prove that at the time of making the said Letters Patents, the Churchwardens had the said Term for Years in them; and by this it appears it was not the Intention of the King, that they should make any Surrender before the Letters Patents, but that the acceptance of the Letters Patents, they having the Estate in them, should be a Surrender. 10 Rep. 67. the Case of the Churchwardens of *St. Saviours* in *Southwark*. And it was resolved in that Case, that the delivery made by the Churchwardens of the said Letters Patents into the *Chancery* by their hands, without writing was sufficient, and as much as they ought to do, and it belongs to the Lord Chancellor to cancel it.

The Master and Fellows of *Magdalen-College* conveyed the Land and Parcel of their College to Queen *Elizabeth*, against which they were restrained by the Act of 13 Eliz. upon which Conveyance a Rent was reserved. The Master of the College
accepts

accepts the Rent, gives a Receipt for it under his Hand (not under the College Seal) this Acceptance of the Rent by the Master, shall not disable or conclude him and the Fellows to enter into the said Lands so aliened; for that this Body politick is a Body aggregate of many, and the Master only by his Acceptance may not divest any Right or Interest which is in him and the Fellows, and conclude him (especially it being without Deed) to enter into the same. 11 *Rep. Magdalen-College Case.*

In Affize of Fresh Force brought against *Moor*, and the Corporation of Mercers in *London*. *Moor* appears in proper Person, and the Corporation by their Bailiff, who had no warrant in Writing. And *per Cur.* the Bailiff cannot appear without warrant in Writing; and so their Appearance was held for null. It was said in this Case, one may justify in Trespass as Bailiff to a Corporation without Deed.

Bayliff in Affize of Fresh-Force cannot appear without a Warrant in writing.

Q. It was also said a Bayliff of a Mannor shall not have Action of Debt for his Salary, without Deed against a Corporation. *Plow.* 91. b.

Trespass was brought for taking Ship and Sails. The Defendant justified by a Command from the Governors and Society of the Trade in the *Cannaries*, who were incorporated by that Name, and had the sole Trade granted to them, with a Forfeiture of all such Goods as should be brought hither from thence, by any not of their Company, and that the Ship of the Plaintiff brought Goods from thence. Plaintiff Demurs, because he justified by a command from a Corporation, and did not alledge it to be by Deed. It was agreed, that a Corporation might employ one in ordinary Services without Deed, as to be a Butler. 18 *Edw.* 4. or *Bro. Corp.* 59. or the like. But one cannot appear to Affize brought against a Corporation, as Bailiff *sans fait*, 12 *H.* 7. 27. Neither can they licence one to take their Trees without Deed, nor send one to make a Claim

Claim to Lands. 9 *Edw.* 4. 39. nor command one to enter for a Command broken. 7 *H.* 7. 9 *Roll. Abridg.* 518. 1 *Ventr.* 42. *Horn and Joyce.*

If the Dean and Chapter put the Chapter Seal to a Deed, this is good without delivery. But if the Dean and Chapter have right to Land, but they cannot make a good Lease before Entry made by them into the Land (as an estranger had of a voidable Lease) they may make it in writing, and affix their Seal to it, and make a Letter of Attorney to *J. S.* to deliver it as their Deed upon the Land, who delivers it accordingly, this is a good Lease; for the affixing the Seal to the Lease doth not make it a Deed, they being out of Possession until the Attorney hath delivered it as their Deed upon the Land, and that otherwise it would be void. 2 *Roll. Abridg.* 24. *Fludd and Gregory.*

Of Conveyances of Lands by Masters and Fellows of a College, Dean and Chapter, &c.

PER Stat. 13 *Eliz.* c. 10. " All Leases, Gifts, " Grants, Feoffments, Conveyances, or States, " to be had, made or suffered by any Master and " Fellows of any College, Dean and Chapter of " any Cathedral or Collegiate Church, Master or " Guardian of any Hospital, Parson, Vicar, or any " other having any Spiritual or Ecclesiastical Li- " ving, or any Houses, Lands, Tythes, Tene- " ments, or other Hereditaments, being Parcel of " any such College, Church, Cathedral, Hospital, " Rectory, Vicaridge, or any other Spiritual Li- " ving, &c. to any Person or Persons, Bodies Po- " litick or Corporate, other than for 21 Years, or " 3 Lives, shall be utterly void, and of none ef- " fect. 13 *Dec.* 17 *Eliz.* The Master and Fel- lows of *Magdalen-College Cambridge*, by their Deed

Deed enrolled in *Chancery*, did give and Grant to our Sovereign Lady the Queen, all that Messuage, &c. *Habend.* to the Queen and her Successors for ever, paying 15 *l.* per Annum Rent to the Master and Fellows, under this Condition, That if the Queen, her Heirs and Successors, shall not sufficiently convey and assure by Letters Patents, &c. the said Messuage to *Benedict Spinola* and his Heirs before the first day of *April* next ensuing, then this present Indenture to be void. *Per Stat.* 18 *Eliz.* c. 2. of confirmation of Letters Patents, its recited, that after the first Year of the said Queen, divers Mannors, Lands, &c. were conveyed to the said Queen, her Heirs and Successors; and divers Bodies Corporate, for the perfect Assurance whereof it was enacted, That all Feoffments, Surrenders, Conveyances and States in any manner conveyed within 7 Years after the end of that Session, to the Queen, by any Person or Persons, Bodies Politick, &c. of any manner, &c. for any Debt, Money, or other Consideration, shall be good in Law to all Intents, &c. saving to all Persons, &c. And further enacts, That all Letters Patents, Indentures, &c. sealed with the Great Seal of *England*, &c. then made and granted by the said Queen shall be good and effectual in the Law against the said Queen, her Heirs and Successors, according to the Tenor and Effect of the said Letters Patents. Queen *Elizabeth* 29 *Jan.* the seventeenth of her Reign, granted the Messuage to *Benedict Spinola*, and his Heirs. *Spinola* 22 *Eliz.* granted it to the Earl of *Oxford*, and he levied a Fine in *Trin.* 24 *Eliz.* which by mean assignment came to *Castilion*, Lessor of the Plaintiff; Earl of *Oxford* paid 15 *l.* Rent to the Master of the College, who received the same, and after enters.

1 *Q.* If the said Conveyance made to *Q. Elizabeth*, by the Master and Fellows of the said House,

House, parcel of the Possession, after the Act of 13 *Eliz.* was restrained by the said Act.

Per Cur. The Act of 13 *Eliz.* restrains the said Masters and Fellows to convey the House to the Queen: Though the Queen is not named in the Act, she is within the words, *Any Person or Persons, Body Politick, &c.* and the intent, for the preservation of Church-Land, &c. 2. Reason, The Master and Fellows are disabled by the said Act to Grant, and then if they are disabled the Queen may not take of them.

2 *Q.* Admitting the said Conveyance was restrained by the Act of 13 *Eliz.* if the said Act of 18 *Eliz.* had supplied the defect of it, and made it perfect.

Per Cur. The Statute of 18 *Elizabeth* had not given any Vigor or Effect to the Grant made to the Queen, for such Conveyances are made by that Act which are for satisfaction of Debts and Sums of Money, or other good consideration; and this Grant to the Queen not being for any Debt, Sum of Money, or other good consideration, it is out of the Letter of the Act, and the Rent was not payable till *Michaelmas*, and the Queen was compellable to Grant in *April*. But admitting it had been for satisfaction of Debt, or Sum of Money, or other good Consideration, yet the Act of 18 *Eliz.* shall not extend to this case; for they are disabled *per Act* of Parliament of the 13th. So if Bishops without the Assent of the Dean and Chapter, by Deed Enrolled had granted to the Queen, her Heirs and Successors, and afterwards the Stat. 18 *Eliz.* is made, that shall not make the Grant good against the Successors, for the Person of the Bishop is disabled to grant this without the assent of the Dean and Chapter to bind his Successor. But when the Person is able, and had power upon the Land, and the Deed is good and lawful, but wants circumstance, as Inrolment, or the like, there such Deed

Construction of
the Statute,
Eliz. c. 2.

is established, and such Deed is supplied by the said Act of 18 Eliz.

Q. 3. If the said Fine and Non-claim for five Years, shall bind the Right of the said Colledge.

Per Cur. It shall not. The Fine doth not bind them. The Estate conveyed to the Queen was good, during the Life of the then Master, who was alive at the time of the Fine levied, and none could enter or claim during his Life (for so long it was good) but if the succeeding Master enters within five Years after his Death, this Entry avoids the Fine.

Fine and No
Claim.

11 Rep. *Magdalen College Case.*

Archbishops and Bishops restrained per Stat. 1 Jac. c. 1. are disabled to do any thing in prejudice of their Successor.

W. A. Master of the *Savoy*, and the Chaplains there brought Debt against *Anderson*. The Master and Chaplains leased Lands to the Defendant for certain Years, and afterwards he accepted of them an Indenture of Bargain and Sale to him and his Heirs, by express words of *Bargain and Sell*, without other words; and one of the Masters of the *Chancery*, within the six Months, came to them into their Chapter-house, and before him they acknowledged the said Indenture to be their Deed, and prayed that it be inrolled, which was done accordingly. It was moved, if the Master and Wardens ought to have appointed one by their Warrant to be their Attorney, to acknowledge the said Deed. It was also moved, if there needed an Inrolment at all, because the Lessee had then an Interest in the Land for Years; and so whether the words *Bargain and Sell* shall be of such force as the words *dedi & concessi*. Per Cur. It being inrolled, it is good.

Deed inrolled.

3 Leon. 84. *Abfalon and Anderton.*

Grants to a Corporation.

King Henry the Eighth seized of the Mannor of *Torrington*, and of a Market within the said Manor every Week, and of a Fair held at *Michaelmas*. Queen Mary incorporated the Village of *Torrington* by the Name of Mayor, Aldermen and Burgeses, and doth not grant to them *Feriam suam* or *Nundinas suas*, but grants to them *de Gratia speciali ex certa Scientia & mero motu quod ipsi & Successores sui possint habere & tenere extunc unum mercatum quolibet die Sabbati, &c. & duas Nundinas ibid. annuatim, videlicet at Michaelmas and St. George's Day, nisi Mercat' & Nundin' ill' essent ad nocumentum vicinorum mercatorum & vicinarum nundinarum*. Adjudged this Grant was void: For the Queen was not well apprised of her own Estate; for when her Intent appears by her Grant to create a Fair at *Michaelmas*, *nisi sit ad nocumentum*, which are the usual Words to create a new Fair, and though the Patent is *de gratia speciali certa Scientia & mero motu*, yet it shall not pass the Ancient Fair, for the Intent of the Grant was to create a new Fair; and yet if it had been in the case of a common Person the ancient Fair would have passed. 1 Rep. 49. a. b. and 53. Had the King been apprised, he would never have granted another new Fair to be held at the same days and same place.

A Remainder to a Corporation which is not at the time of the Limitation of the Remainder is void, though such be erected afterwards during the particular Estate; for this is *Potentia remota* 2 Rep. 51. a.

Mayor, &c. not named by their Name. A Feoffment may be made to an Abbot and Prior by the Name of Abbot and Prior of such a Place

Place without naming them by their Name of Baptism. 29 *Ed.* 3. 13 or 136. Same Law of a Mayor and Dean.

As to Grants the Diversity is thus, between a Corporation aggregate of many capable Persons, and a sole Corporation; as if Lands be given to a Dean and Chapter, they have a Fee Simple without these Words (*Successors*) for that the Body never dies. But if Lands be given to a Bishop, Parson, or any other sole Corporation, who after their Death ceases have a Succession. there without these Words (*Successors*) nothing passeth to them but for Life (except in case of Frankalmoigne. 1 *Inst.* 94 b. * q. So if one give Land to the King by Deed indented and inrolled. 9 b. q.

If a Corporation wanteth an Head. When there is no Dean or Mayor they cannot make Claim, or continue Claim, because they have neither Ability or Capacity to sue any Action; and a Grant so made to them is void; because the Body is not compleat. This is to be understood of an immediate Grant, for if during the Vacation of the Abbot of *Dale*, a Lease for Life or Gift in Tail is made, Remainder to the Abbot of *Dale* and his Successors, this Remainder is good if there be an Abbot made during the particular Estate.

Grant to a Corporation that wants an Head how good or not.

If there be Mayor and Commonalty of *D.* and the Mayor dieth, a Grant made to the Mayor and Commonalty of *D.* is void for the Cause aforesaid. But in that case if a Lease for Life be made the Remainder to the Mayor and Commonalty of *D.* the Remainder is good if there be a Mayor elected during the particular Estate.

If Lands be given to *George* Bishop of *Norwich* where his Name is *John*; yet such Grant is good, though the Name of Baptism may be mistaken; for there can be but one of that Dignity or Name.

Name of Baptism mistaken

Mayor not named.

If by Licence, Lands are given to the Dean and Chapter of the Holy and individed Trinity of *Norwich*, this is good, tho the Dean be not named by his proper Name, if there were a Dean at the time of the Grant, but in pleading he must shew his proper Name. And so it was held, 13 *Edw.* 4. A Grant good to a Mayor, Aldermen and Commonalty, albeit the Mayor was not named by his proper Name, but in pleading it must be shewed. 1 *Inst.* 3. a.

Grant to a Mayor, &c. void for the Incertainty.

Queen *Elizabeth* being seized of a great Waste in *R.* granted to the Mayor and Burgeses of *Chipnam*, the moyety of a Yard Land in the said Waste, without certainty in what part of the said Waste they should have the same, or the special name of the Land, or how it was bounded and without any certain Description of it: and afterwards the Queen granted to Sir *William Hungerford* the said Waste, and afterwards the said Mayor and Burgeses, by warrant of Attorney under the Common Seal, authorised one *A.* to enter into the said Waste, and in the behalf of the said Mayor and Burgeses to elect one Moyety, &c. who did so accordingly. Upon this matter given in Evidence, the Parties did demur in Law, and the Jury was discharged. *Per Cur.* The Grant to the Mayor was utterly void for the incertainty of the thing granted.

Upon Grant of half a yard Land, how they make Election.

If a common person make such a Grant it's good enough, and there the Grantee may make his choice where, &c. and by such choice executed, the thing shall be reduced into Certainty; but the Grantee cannot have such choice against the King, and it was held that this Grant was not only void against the Queen her self, but against Sir *William Hungerford* her Patentee; and it was held, that if a common person had made such a Grant to a Corporation, which ought to be reduced to certain-

ty by Election; the Corporation should not make their Election by Attorney, but should make a special warrant of Attorney, reciting the Grant to them, and in which part of the said Waste the said Grant should take effect, *West, &c.* or by Buttals, *&c.* according to which direction the said Attorney is to enter. 1 *Leon.* 30. Sir *Walter Hungerford's* Case.

Grants and Leases by a Corporation.

Corporations must acknowledge Deeds, and levy Fines, *&c.* by Warrant of Attorney, that is, Corporations aggregate, and they are always intended to be in their Chapter-house, and cannot come into Court to acknowledge a Deed. 1 *Leon.* 184.

The Dean and Chapter of *St. Mary in Exeter* made an Indenture of Lease for 40 Years in their Chapter-house to *W.* and thereunto put their Seal in the Chapter-house, and made a Letter of Attorney to another to enter, and to make livery of the said Deed. *Per Cur.* The Lease is good enough, and there is no other Form or Means for a Corporation to make a Lease than this here; and the Dean and Chapter might make such a Lease before Entry. Tho it was objected, That when the Dean and Chapter in their Chapter-house make this Lease, and set their Chapter Seal to it, it was their Deed presently, without other delivery; and then another being in Possession at the time of putting the Seal to it, they were out of Possession thereof, and the Lease void, because they were not in possession at the time of the making of it. For no delivery is necessary to the Deed of a Corporation. 2 *Leon.* 97. *Willis and Jermis.*

No Delivery
necessary to a
Deed of a Corporation.

A Corporation
not to be seized
to another use.

It was only said, a Corporation cannot be Feoffees to uses, and that a Corporation cannot be seized to anothers use, and so a Bargain and a Sale by a Corporation is not good, and the nature of such Conveyance is to take effect by way of Use in the Bargainee, and after the Statute is to draw the Possession to the Use. This was objected in *Holland and Brices Case*. 2 *Leon.* 121. where the Prioress of *Holywell* by Deed of Bargain and Sale enrolled, sold the Mannor of, &c. to Sir *Tho. Audley*, Chancellor of *England*, and his Heirs. But the Court disliked the Exception as dangerous; for such was the Conveyance of the greatest part of the Possessions of Monasteries; and though such a Corporation cannot take an Estate to the Use of another, yet they may charge their Possessions with an Use to another.

Capacity to
take, but not to
Grant.

Queen *Elizabeth* makes a Lease for Years to the Men of *Chesterfield*, rendring Rent, and the Grant was to them by the name of Aldermen of *Chesterfield*, and they by the name of Aldermen of *Chesterfield*, grant all their Interest to *Clark*, in the said Land, and agreed by the Court, that the Grant to them was void; for they by the Grant of the Queen have capacity to take, but not to Grant the Land to another. *Cro. Eliz.* 35. the Aldermen of *Chesterfields Case*.

Pleading.

It was said in *Prediman* and *Woorseys Case*. *Cro. Jac.* 109. If a Lease for Years be made to a Corporation, who cannot take without Deed, and they grant it over, the Grantee may intitle himself thereto, without shewing the Deed, because the Lease of the thing in its own nature might have passed without Deed, although the Persons who took it could not take it without Deed.

If a Dean and Chapter make a Lease, without naming the Dean by his proper Name, the Lease is good if there were a Dean at the time of the Grant,
but

but in pleading, the proper Name of the Dean must be shewed. The Judges in 13 Ed. 4. held the Grant good to a Mayor, Aldermen and Commonalty, albeit the Mayor was not named by his proper Name; but in pleading it must be shewed. 1 Inst. 3. 2.

Abbot and Covent make a Deed, and in the end Sealing. the words are *in cuius rei Testimonium sigillum nostrum apposuiimus*, and saith not *commune sigillum*, and good enough. 26 H. 6. 4.

If the Dean and Chapter put the Chapter Seal to a Deed, this is good without delivery. But if a Dean and Chapter have right to Land, but they cannot make a good Lease before Entry made by them into the Land, as an estranger had of a voidable Lease, they may make a Lease in writing, and affix their Seal to it, and make a Letter of Attorney to J. S. to deliver this as their Deed upon the Land, who delivers this accordingly, this is a good Lease; for the affixing their Seal to the Lease doth not make it a Deed, they being out of Possession until the Attorney had delivered it as their Deed upon the Land, for that otherwise it shall be void. 2 Rol. Abridg. 34. Fludd and Gregory. And yet *Fermin and Willis's* Case seems to be otherwise. If a Corporation be disseised, and after Seal a Deed of Licence, and make a Letter of Attorney to J. S. to enter upon the Land, and deliver it as their Deed, and he does so accordingly, yet this is not a good Lease; for there need no delivery of a Deed of a Corporation, but the putting to their Seal makes it a perfect Deed, and they might have made a Letter of Attorney to seal and deliver this as their Deed. 1 Rol. Abridg. 830.

Letter of Attorney to take Possession.

The Master, Brothers and Sisters of the Hospital *beatæ Mariæ Virginis*, let by Indenture by the Name of, &c. the Hospital *beatæ Mariæ*, and leave out *Virginis*, yet good. 2. The words

of the Indenture are *hæc Indentura inter Magistrum fratres & sorores Hospitalis beatæ Mariæ Testatur quod*, The said Master, with the Assent of the Brothers and Sisters had leased to *A. in cujus rei Testimonium*, the said Master, with the Assent of the said Brothers and Sisters, had put their Common Seal. *Per Cur.* It is not good; for the Brothers and Sisters being one intire Body with the Masters, are not Parties to the Indenture, but give their Assent only: and it is not like the Case of Abbot and Prior, who make a Lease for Years, with the Assent of their Covent; for the Monks and Friars are dead Persons in Law, and cannot be Parties. Nor like the case of a Patron and Ordinary, where the Parson, with the Assent of the Patron and Ordinary grant a Rent charge, for there the Person or principal Grantor, and the others have not any express Interest in the Lands charged. 4 Leon. 11. Clarks Case.

Parties to the Indenture.

With the Assent, &c.

Grant of an Annuity granted by a Corporation in Consideration of good Service done.

“ **T**O all Christian People, &c. the Mayor,
 “ Sheriffs, Citizens and Commonalty of the
 “ City of *Norwich*, Greeting, in our Lord God
 “ Everlasting, Know ye that we the said Mayor,
 “ Sheriffs, Citizens and Commonalty, for, and in
 “ consideration of the good and faithful Service to
 “ us by *L. M.* of the said City of *Norwich* Esq;
 “ before this time done and performed, and for di-
 “ vers other good, &c. at this present, especially
 “ moving, with our unanimous Assent and Consent,
 “ have given and granted, and by this our writing
 “ have confirmed, and by these Presents for us and
 “ our Successors, do give and grant unto the said
 “ *L. M.* a certain yearly Rent of 5 *l.* of lawful
 “ Money

“ Money of *England*, To have, hold, perceive,
 “ receive and enjoy the aforeſaid yearly Rent of 5 *l.*
 “ to the ſaid *L. M.* and his Assigns, by the Hands
 “ of our Chamberlain of the City aforeſaid, from
 “ time to time, for the time being for every Year
 “ at the Feaſt of the Annunciation of the Bleſſed
 “ Virgin *Mary*, and *St. Michael* the Archangel,
 “ during the term of the natural Life of the ſaid
 “ *L. M.* to be paid by even and equal Portions ;
 “ the firſt Payment thereof to begin at the Feaſt of
 “ the Annunciation of the Bleſſed Virgin *Mary*
 “ next coming, after the date of theſe Preſents. And
 “ if it ſhall happen the ſaid Annuity or yearly Rent
 “ of 5 *l.* or any part or Parcel thereof to be be-
 “ hind and unpaid by the ſpace of one Month next
 “ after any of the Feaſts aforeſaid, wherein the ſame
 “ ought to have been paid ; We do Will and
 “ Grant that then, and ſo often it ſhall and may
 “ be Lawful for the ſaid *L. M.* his Executors and
 “ Assigns, into all and ſingular our Mannors,
 “ Meſſuages, Lands, Tenements, Poſſeſſions and
 “ Hereditaments whatſoever ſituate, lying, and be-
 “ ing in *Norwich* aforeſaid, or in the County of
 “ the ſaid City of *Norwich*, or elſewhere in the
 “ ſaid County of *Norfolk*, or in any or every of
 “ them, or any part of the ſame, to enter and there
 “ to diſtrain ; and the Diſtreſs and Diſtreſſes there
 “ taken to lead, drive, carry away, impound, and
 “ in his Power to detain and retain until the afore-
 “ ſaid Annuity or yearly Rent of 5 *l.* together with
 “ the Arrerages of the ſame, if any there ſhall be,
 “ and the Damages, Coſts and Expences by occa-
 “ ſion thereof had done and ſuſtained to and by the
 “ ſaid *L. M.* his Executors, Adminiſtrators, or As-
 “ ſigns ſhall be fully and wholly paid, contented
 “ and reimbursed, of which ſaid Annuity, or yearly
 “ Rent, we have put the ſaid *L. M.* in full Poſſeſ-
 “ ſion and Seiſin by the payment of one Penny to

College Leases
not to exceed
40 Years.

Colleges, and the like, shall make Grants in Reversion, tho but for a Year, and the reason was, because by such Grants in Reversion they shall be excluded to have their Rent of the particular Tenants for the Time. But to make a Lease for 20 Years to one in Possession, and to make another Lease to another or 20 Years, to begin after the end of the former Lease, is good; for that one and the other do not exceed 40 Years comprised in the Statute. *Pop. p. 9. Tompson and Trafford.*

Now the Statute of 32 H. 8. c. 28. Ordains certain Qualification of Leases made by Ecclesiastical Persons, and Masters of Colleges and Hospitals are bound by it.

9 Qualifications of such Leases.

1. Such Lease must be made by writing Indented, and not by Deed, or by Parol. A Prebendary cannot now by Statute 13 Eliz. make a Lease of the Possessions of his Prebend, without Deed.

2. Such Lease must begin from the day of the Date of the making thereof, or from the making thereof, but by the Statute of 1 Eliz. and 13 Eliz. they must begin from the making, or from the time of the Commencement.

3. If there be an old Lease in being at the time of the making of such new Lease it must expire, be surrendred or ended within a Year after the making of such new Lease, and such Surrender must be absolute and not Conditional. But by the Statute 1 Eliz. c. 17. Archbishops and Bishops may, with the confirmation of Dean and Chapter, make concurrent Leases. So by 13 Eliz. may Ecclesiastical Corporations aggregate. But by 18 Eliz. c. 11. the old Lease is to be expired within 3 Years next after the making the new Lease. But Bishops are not comprehended in this Act of 18 Eliz. c. 11.

4. There must not be a double Lease in being at one and the same time, the one for Years, and the other
other

other for Lives. The words are for 21 Years, or 3 Lives, so as one or the other may be made, but not both. 5 Rep. *Elmers Case*. A Lease to J.S. for the Lives of his three Sons is good and warranted. *Cro. Jac.* 76. against Colleges. *Vid. Stat. 14 Eliz. 1.*

5. Such Lease must not exceed 21 Years, or three Lives, from the making of it, but it may be for a lesser Term, or fewer Lives. A Lease for 99 Years, if one two or three Lives, so long shall live is good within this Statute. 8 Rep. 20. b.

6. It must be of Lands and Tenements, manurable or Corporeal, out of which a Rent may be reserved, and not of things that lie in Grant, as Advowsons, Fairs, Markets, Franchises, Tythes, Toll, &c. out of which a Rent cannot be reserved; where Tythe and Land together are demised, rendering the accustomed Rent, the Successor cannot avoid the Lease in the whole, or as to the Tythe only, it must be good, or else Tythe in no sense could be demised. *Vaughan Rep.* 204.

7. Such Lease must be of Lands and Tenements which have most commonly been letten to Farm, or occupied by the Farmers thereof by the space of 20 Years next before the Lease made, or by the most part of 20 Years; so as if they have been lett for 11 Years at one, or several times within the 20 Years next before the making of the new Lease, it sufficeth. 1 Inst. 44. b. But this seems not to be Law; for the first part of the Statute as to Leasing, seems to refer to a more ancient time, and the latter part of Farmers to 20 Years. *Sid.* 416. the best construction is, that it ought to be antiently, and also lately let. And by *Vaughan* 30. Lett usually, shall be intended Lands twice letten.

A Grant by Copy of Court Roll in Fee for Life or Years, is sufficient letting to Farm within this Statute: So is *Baugh* and *Heines's Case*. *Cro. Jac.* 76. Dean and Chapter seised of a Mannor, where-

of

Usually demised.

of the Land in Question was Copyhold demisable for 3 Lives, &c. They demise this by Indenture for 3 three Lives, rendring the old Rent. It was objected, That this Lease was not warranted, because this Land was not usually demisable *per Indenture*, but only by Copy. *Per Cur.* This Land is accounted usually demisable, when its always demised; as if it had usually been let at Will at Common Law rendering Rent, such Land is said to be usually demised.

A Prebend had been usually Let (except the Crab Trees) and a Prebendary makes a Lease without that exception, reserving the ancient Rent, &c. This Lease was adjudged void against the Successor, by the addition of the Crab-Trees, and the Lease was void. *Cro. Jac.* 458. *Smith and Boles.* So is *Mountjoys's Case.* 5 *Rep.* Its not an ancient Rent, where more is Lett than was before.

8. Upon every such Lease there must be reserved yearly, during the same Lease due and payable to the Lessors and their Successors, &c. so much yearly Farm or Rent, or more, as hath most accustomedly been yielded and paid for the Land so demised within 20 years next before such Lease made.

Accustomable Rent.

If Land usually Letten be demised with any other Lands, &c. tho a Rent be reserved which exceeds the Value of those Lands, and the old Rent, yet such Lease shall be avoided by the Successor, and is not warranted by the Statute. For the accustomed Rent is not reserved, seeing part was not accustomedly Letten, and the Rent issues out of the whole. 5 *Rep.* 5, 6.

If the accustomed Rent had been payable at four Feasts, or days in the year; yet if it be reserved by the new Lease to be paid at one Feast, if it be reserved yearly it is within the Statute. 1 *Inst.* 44. b.

The

The reservation of eight Bushels of Corn, instead of a Quarter is all one in Quality, Value, and Nature, and varies only in words. 5 Rep. 5.

Lease was made by *Corpus Christi* College in *Oxon.* reserving 22 s. and no Corn, whereas the ancient Rent was 22 s. 4 d. this Lease is void, per Stat. 13 Eliz. & 18 Eliz. Cro. El. 815. 4 Rep. 119. *Dumports* Case.

If the yearly Rent or Farm be reserved, tho Harriot, and other casual Services be omitted, yet it is sufficient; and so it was resolved in the Dean and Chapter of *Worcester's* Case: Harriots are no annual Rent.

It must be *verus & antiquus redditus*. Therefore if the Lessor reserve a lesser Rent during his Life, and afterwards the full Rent in remainder, it is not good; for it must be the ancient Rent during the Term, and the Term and intire Term is all one.

It is said in *Tbredneedle* and *Lynams's* Case, *Keb.* If a Bishop have two distinct Mannors that have been accustomedly demised together, and one intire Rent is reserved for both Mannors, and these being out of Lease, the Bishop may demise them severally, reserving Rents amounting in the whole rateably and good.

9. Such Lease must not be made without Impeachment of Waste; therefore if a Lease be made for Life to one, the Remainder to another for Life, Remainder to a third for Life, this is not good against the Successor, though but for three Lives, because the Remainders make the present Tenants punishable for Waste for the time. 1 Inst. 44. b. But if a Lease be made to one during three Lives, this is good; for the Occupant, if any happen, shall be punished for Waste. 6 Rep. 37.

Devises

Devises to Corporations.

Stat. 34, and 35 H. 8. of Explanation of Wills, Bodies Politick and Corporate are excluded out of it.

By the Purview of 1 and 2 P. and M. c. 8. it should be lawful, &c. to give Lands, &c. by Feoffment, Grant, or other Assurances, or by his Last Will and Testament in Writing, to any Spiritual Body Politick or Corporate, notwithstanding the Statute of *Mortmain*. A. C. devised Lands to the Master, Fellows and Scholars of *Trinity-College* in *Cambridge*, and to their Successors for ever, for the finding of certain Grammar poor Scholars; and it was held good and to be favourably expounded, though the said College did not consist of Divines but others also. And the said Act was expounded to bind the King.

Dr. *Griffith Flood* being seized of Lands in Fee, Aug. 25 *Eliz.* devised the same to *Anne* his Wife for her Life, and after to *Jane* his Daughter for her Life, and after these Lives ended to the principal Fellows and Scholars of *Jesus-College* in *Oxon*, and their Successors to find a Scholar of his Blood from time to time. The Lives ended, *Bridget Flood* the Heir of *Griffith Flood* entered. *Hobert* and the Chief Baron, to whom the Case was referred, resolved that the Devise was void in Law; because the Statute of Wills did not allow Devises to Corporations in *Mortmain*; but they held it clearly within the Relief of the Statute of Charitable Uses, under the Words (limited and appointed.) *Hob.* 136. It was likewise held by them, that the *Proviso* in the Statute which exempts Colleges, is only intended to exempt them from being reformed by Commission; but not to restrain Gifts made to them. *Vide infra.*

In

In a Devise to a Corporation though there be a Misnomer, yet it's good.

If a Man devise to the City of *London*, or to *Queen's College, Oxon*, it is good.

If one devise to a Commonalty of a Guild that is not incorporate, it's void.

If one devise to a Corporation, and there be none of that Name at the time of the Devise, nor during the Life of the Testator, this Devise is void.

If one give a Legacy to *J. S. Dean of St. Paul's*, Devise, the and the Chapter there and their Successors; and after, before the Death of the Devisor, *J. S. dies*, Head dies before the Devise for. and another is made Dean; yet this Devise is good notwithstanding this, and the Land shall vest in the new Dean and Chapter: Yet it did not vest according to the Words, but it shall vest according to the Intent; for the chief Intent was to convey this to the Dean and Chapter and Successors, and the single Person of *J. S.* was not the principal Cause. *Plow.* 344. b.

R. W. 6 Ed. 6. devised a Messuage to *A.* his Wife for life, Remainder to his Son in Tail, and if he die without Issue, or be unthrifty, that it shall remain to the Master and Wardens of the Mystery of *Cordweyners* in *London*, whereas they were incorporated by the Name of Master, Wardens and Commonalty, &c. Notwithstanding this Misnomer the Justices held it good; for by intendment the Devisor had not knowledge, nor had Conusance of their very Name. *Cro. El. 106. Foster and Walter, 2 Leon. 165.*

An. 26 H. 6. H. devised two Houses in *Walbrook, London*, to the Church-Wardens of *St. Stephens* to these Uses: 1. To find an *Obit*. 2. To repair the same Houses. 3. To bestow the Residue of the Profits for the Reparation of the Church of *St. Stephens*, and to provide Ornaments in the same Church; on Condition, if they failed in finding the *Obit*,

Obit, that then the Estate should cease, and the Land should be to the Mayor and Commonalty of *London*. *Per Cur.* by *Stat.* 1 *Ed.* 6. the King shall have no more than that which was appointed for the Maintenance of the *Obit*, that being only the Superstitious Use. But where Land was given to a Priest to say Mass, and also to give part to the Poor, and because the part to be given to the Poor was uncertain, the Queen had all. *Cro. Eliz.* 449. *Hart and Brewer.*

Uncertainty.

Misnomer.

Lands were devised to the Mayor, Chamberlain, and Governors of the Hospital of St. *Bartholomews* in *London*, whereas in truth they are incorporated by another Name; yet by *Weston* and *Dier* the Devise is good, and by *Manwood*, because it shall be taken according to the Intent of the Devisor. 3 *Leon.* 18.

Devise to a Church.

One devises certain Tenements in *London* for Life, Remainder over *Ecclesie St. Andrea de Holbourn*. This Devise is good to the Corporation of the Parson of the Church of St. *Andrews* in *Holbourn* and his Successors, for such Description was sufficient in a Will to express the Parson of the Church, and his Successors. 10 *Rep.* 59.

The Stat. made 1 & 2 *P. & M.* to make good Devises to Spiritual Corporations, was extended to *Trinity-College* in *Cambridge*. The Reason was, because it was principally ordained for the Study of Divinity; but it would not have been so in a College ordained for Physicians or Civilians. *Hob.* p. 123.

G. F. An. 25 *Eliz.* devised Lands in Fee to *Anne* his Wife for Life, and after to *Jane* his Daughter for Life, and after those Lives ended to the principal Fellows and Scholars of *Jesus-College* in *Oxon*, and their Successors, to find a Scholar of his Blood from time to time, and dies. It was agreed *per Cur.* that the Devise was void in Law, because

because the Statute of Wills did not allow Devises to Corporations in *Mortmain*; yet it was held clearly to be within the relief of the Statute of Charitable Uses of 43 *Eliz.* under the Words (*limited and appointed for Charitable Uses*) and so it was decreed that the College should enjoy it against the Heirs of *G. F.* and it was held that the *Proviso* in the Statute which exempts Colleges, is only intended to exempt them from being reformed by Commission, but not to restrain Gifts made to them. *Hob. 136. Griffith Flood's Case.*

If one devise to a Publick use there must be Licence and Incorporation, else it is *Mortmain*. *Q. 1 Rep.*

R. C. Citizen and Freeman of *London*, seized of six Messuages in *London*, devised the same by his Will in Writing, 6 *H. 7.* to the Parson and Church-Wardens of the Parish of *St. Mary Magdalen* and their Successors to the Intent for Superstitious Uses, and the residue of the Profits thereof to be employed about the Reparations of the Church. In a special Verdict in *Ejectment* the Jury found the Customs of *London*, that the Parson and Church-Wardens are a Corporation to purchase to the Use of their Church, and that a Freeman and Citizen of *London* may devise in *Mortmain*. *Per Cur.* forasmuch as it was but the Residue *si quid fuerit*, which is uncertain if any shall be or not, and the Superstitious Uses amounted to very near the Yearly value of the Land, therefore it is within the Statute 1 *Ed. 6.* and given to the King. *Cro. Car. 455, 456. Humphries versus Knight.*

Devise to a Parson and Church Wardens.

Superstitious Uses.

If the Mayor or President of a College by Will deviseth any Lands to his College and dies, such devise is void; for at the time when the Devise should take Effect the College is without a Head, and so not capable to take. The Case of the President of *Corpus Christi College*, 4 *Leon. 227.*

C A P. XII.

Misnomer of Corporation.

By Addition, Omission. Inversion of Order. Variance not in substance of the Name. The best course in doubts of Misnomer, is to cause the Verdict to be found, that the true Corporation did grant, per nomen. Where, and in what Cases a good Description of a Corporation is sufficient, though there be a Misnomer. The difference between the name of the Place, de Savoy & vocat' Savoy. Corporation not to be limited to a County. Sufficient demonstration of a Place. What the Mayor and Burgeſſes of Lyn's Case. The Dean and Chapter of Carlisle's Case. Dean and Chapter of Windsor's Case. Merton College Case. Paſchal and Fanſhaw's Case. The Case of the Cooks of London. Queens College in Oxon. Launceſton in Cornwall. The College of Eaton's Case. The Case of the Corporation of Boſton in Lincolnſhire. Trinity College in Cambridg. Dean and Chapter of Chriſt-Church in Oxon.

By } Addition.
 } Omiſſion.

Inverſion of
 Order.

THE Hoſpital was founded by the name *Minifter des Pauperis Domus de Donnington. T. L.* The Maſter and his Conſreers made a Leaſe thereof by the name of *Thomas Leatberland Miniſter Pauperis Domus Dei* (Miniſter of the Almes-houſe of God) the Queſtion was if this Leaſe made by *T. L.* was according to the name of the Corporation, or not, being an Inverſion not only of Order and Words, but of Senſe and Matter, as was objected. But *per Cur. Miniſter*

ster is *nomen equivocum multiplex ambiguum relativum*. Minister is Servant, so Minister des but as Servant of God, of his poor House de Donnington; that is as much as to say, Minister of God, for or about his poor House, &c.

If the Essential part of a Corporation be named it is sufficient. The Action was on Bond, *ad respond' Majori & Burgensibus de Lyn Regis in Com' N.* and it was found they were Incorporated *Major & Burgenses burgi de Lyn Regis, & non per illum nomen.* Per Cur. The omission of this word (*burgi*) shall not hurt. 1 Brownl. 57. Mayor and Burgesses of Lyn vers. Paine, and as Hobart said, The Burgesses of Lyn implied, That Lyn was a Burrough, and the meaning of Lyn Regis was adjudged to import that it was Kings Lyn. Hob. 125.

Omission.

Mayor and Burgesses of Lyn Regis.

It was objected that it was incorporated by the name of *Major & Burgenses burgi Dom' Regis de Lyn Regis*. And after the King had given them their Name its added, *& quod per idem nomen vocarentur, &c. & non per aliud nomen.* But per Cur. this word *idem* hath two significations, 1. *Idem syllabis seu verbis, & idem re seu sensu.* And several Cases were cited to that purpose, that if the Variances and Omissions be not the Essential part of the Corporation it is sufficient.

The Dean and Chapter of Carlisle were incorporated by the name of *Decanus & Capitalum Ecclesie Cathedralis Sancte & individue Trinitatis Carliensis*. And they make a Lease by the name of *Decanus Ecclesie Cathedralis Sancte Trinitatis in Carlisle, & totum Capitulum de Ecclesia predicta*. Now in this Lease, 1. the word (*individ'*) is omitted, 2. in Carlisle, where the true name is *Carliensis*, id est *de Carlisle*: 3. This word (*totum*) is added: 4. The order of the words is not observed, yet resolv'd the Lease was good enough notwithstanding.

Carlisle.

Variances not in Substance of the names.

withstanding these variances ; because these variances are not in the substance of the Name. And in *Hall and Wingates* Case the Incorporation was by this name, *The Dean and Canons of the King's Free Chappel of St. George the Martyr, within his Castle of Windsor.* And in the time of *K. Philip* and *Q. Mary*, they make a Lease by this name, *The Dean and Canons of the King and Queen's Free Chappel of St. George, within the Castle of Windsor.* Now here they omit the word (*Martyr*) and they say, *within the Castle*, instead of *within his Castle of Windsor*; but these differences were not material. But one variance was material (*the King and Queen's Free Chappel*) this is matter of Substance : and tho at the time of the Demise it was the King and Queen's Free Chappel, yet the Corporation ought to be such as was given by the Founder ; as if a College be incorporate in the time of *Ed. 6.* by the name of Master and Fellows of *Kings College* ; if they make a Lease in the Reign of *Q. Elizabeth*, by the name of Masters and Fellows of *Queens College.* A College in *Oxford* was incorporated *per nomen Guardiani & Scholarium Domus sive Collegii Scholarium de Merton in Universitate Oxon.* And they afterwards make a Lease, *per nomen Custodis Domus sive Collegii de Merton in Oxon. & Scholar' ejusdem Domus* : and four Variances were observ'd, 1. *Guardianus, custos.* 2. The sense was, *per nomen Domus seu Collegii de Merton*, omitting (*Scholarium*). 3. For *in Universitate Oxon.* the Lease was in *Oxonia.* 4. *Scholares* was misplaced, for they come in the end, where in the Act of Parliament they are named immediately after the Guardian. *Per Cur.* the second Variance is Substance ; for the Act had baptized the College by the name of the College of the Scholars of *Merton*, and they have made a Lease by the name of the College of *Merton* himself, who in truth was the Founder.

Merton College.

Variance in the name.

Variance in Substance.

Founder. But *Hobart* p. 125. thinks this an hard Judgment, which he saith he should hardly have judged; for since they were named Scholars of the House in one part of the name, it must follow, it was the House of the same Scholars as the Burgeses of *Lyn* implied, That *Lyn* was a Burrough.

Its a good Rule in pleading, or in a special Verdict in many Cases, if by express Averment, or by finding of the Jury it shall be made apparent to the Court, that the true name of the Corporation, and the name in the Lease or Grant are all one in effect, by Averment, it much inforces the matter, tho the words have some difference, and the *per nomen* implies in it self an Averment, that the Mayor and Burgeses did make the Lease by the name *prout*. So in pleading, the name of a Corporation was the Abbot of the Monastery of *beatæ Mariæ Eborum*, and Bond was made *Abbati Monaster' beatæ Mariæ extra muros civitatis Eborum*. Now tho the Abbey was *extra muros*, yet in truth it was within *York*, and the Bond was good; and the Abbot brings his Writ of Debt by his true Name, and in his Court he saith the Obligation was made to the Plaintiff, *per nomen*, &c. which implies in it an Averment, that the Abbey was within *York*; and in substance, as appears by Averment *dehors*, all was one.

Paschal and *Fanshaws* Case was 29 and 30 *Eliz.* in *Scaccario*; the Masters and Chaplains of the *Savoy* were incorporated *per nomen* *Magistri & Capellanor' Henrici nuper Regis Angliæ septimi de Savoy*; and they make a Lease of Parcel, &c. to *J. P.* *per nomen* *Magristri Hospitalis Henrici Regis Angliæ septimi vocat' de Savoy & Capellanor' ejusdem hospital'*. And it was adjudged in the *Exchequer*, that the Lease was void, for that they have mistaken their name of Corporation in a material part in the place: the true name is *Hospitalis de Savoy*,
Mistake in Substance.

and the demise is *Hospitalis vocat' le Savoy*. *Hobart* thinks this a hard Judgment; for that things shall be supposed to be named according to truth. Upon this Judgment a Writ of Error was brought, and after compounded, and so no very firm Authority. And my Lord *Coke* said well, There is small difference between the Mayor and Commonalty of the City of *London*, and the Mayor and Commonalty of the City called *London*, unless it can be shewed that they are two distinct Corporations, and have two distinct names. 10 Rep. 120.

Cooks of
London.

The Freemen of the Mystery of the *Cooks* in *London* being incorporated by the name of Masters or Governours, and Commonalty of the Mystery of the *Cooks* in *London*, and being seized of certain Lands in the Right of their Corporation. *J. J. M. R. J. B.* and *R. Iswell*, Master and Guardians of the Craft or Mystery of *Cooks* of *London*, and the Commonalty of the same Craft or Mystery, and one *J. Lawrence*, by such name, Bargain and Sell the said Land to *Dormer*. *Per Cur.* *Dormer* on his Entry is a Disseisor, for the Corporation was mis-named; for by the Corporation two of them ought to be Masters or Guardians, and four are named by their proper Names, and Master is added in the end, which cannot be referred to them all, nor to two of them, for that it is in the singular number, but of necessity ought to be referred to *Iswell*, who was last named. Neither is the word Guardians warranted by the Charter. Craft is but Surplusage. *Plow.* 537. *Cross* and *Howell*.

The Stat. of 3 *Jac.* gives to the Chancellor and Scholars of *Oxon.* the presentation of Popish Recusants convict, and they have brought the Action in the name of the Master, Chancellor, and Scholars of the University of *Oxford*, and so a Misnomer. But *per Cur.* in an Act of Parliament, when the express Intention appears, Misnomer of a Corporation

ration shall not avoid the Act. So in a Will, a good Description is sufficient. One deviseth certain Lands *pur vie, Rem. Ecclesie Sancti Andree de Holborn*, this devise is good to the Corporation of the Parson of the Church of St. Andrew, and his Successors. So if a Devise be made to the City of London, or to Trinity College in Cambridg. 10 Rep. The Case of the Chancellor and Scholars of Oxon.

Aula Reginae in Oxon was incorporated by this name, *Præpositus & Scholares Aulae Reginae de Oxon*, and they make a Lease, *per nomen Præpositi Sociorum & Scholarium Aulae vel Collegii Reginae in Universitate Oxon*. In which there are three Additions (*sociorum*) (*vel Collegii*) (*Universitatis*) one Alteration (*de*) for (*in*) one Omission (*Scholarium*) yet resolved to be good enough, and the College is nominated in such case as it might well be distinguished. 1 Rep. 19. *Ayres's Case*.

The Prior of *Lanceston* seized in Fee of the Tenements in Question, which then were four Closes in *North Dracomb* in *Lanceston*, and on 28 Sept. 27 H. 8. demised them to J. P. by the name of the four Closes in *Dracomb, infra burgum de Lanceston* for 99 years. 30 H. 8. The Prior and Convent surrendered, &c. which by mean descent came to Queen Elizabeth, who by her Letters Patent in the 24th year of her Reign, granted to E. W. and J. F. and their Heirs, *totum illud Messuagium & Tenementum vocat' Dracombs ac omnia terras & tenementa dict' Messuagio spectant' vel cum eod' dimissa situat' & jacent' in Lanceston in Com' Cornubie ac nuper Prioratui de Launceston spectantia*, and these came by Conveyances to the Lessor of the Plaintiff, and that before the Lease aforesaid, videl. 21 Eliz. an House was erected upon Parcel of the said Closes, they find that the Prior of *Lanceston* had not other Lands in *Lanceston*, known by the name of *Dracombs*, or *North-Dracombs* there besides the

Where, and in what Cases a good Description of a Corporation is sufficient, tho there be a Misnomer.

Queens College in Oxon.

Lanceston.

Lands in the Declaration, and that *K. J. 1. an. 9.* demised those Lands to *J. E.* by the name of the four Clofes late in the Tenures of *John Peers* in *North Dracombs*, under whom the Defendant claims. *Per Cur.* the Patent is good for the Messuage and all the Land ; for tho the Land was not built upon when it was demised, and when it came to the King, and that afterwards a Messuage was erected thereupon before the Patent, yet it shall be granted as it is, and by such name as it is known at the time of the Patent. *Cro. Jac. 168. Jennings and Laks.*

This Case of *Paschal* and *Marriot* was acutely argued in 1 *Leon. 159. Case 228.*

Savoy.

King *Henry 8.* in 4 *Anno Regni sui*, founded an Hospital by the name of the *Master and Chaplains of the Hospital of King Henry the 8th de le Savoy.* And afterwards in the time of *Q. Mary*, the said Master and Chaplains leased the same to the Defendant by the name of *W. H. Master of the Hospital Henrici nuper Regis Angliæ septimi vocat' le Savoy & Capellan' Hospital' prædict.* And afterwards by their former name (which in truth was their very name) leased the same to *Fanshaw*, who leased the same to the Plaintiff. It was adjudged by two of the Barons in the *Exchequer*, that the Lease was void for the Misnomer, against the Opinion of *Manwood.* Upon this a Writ of Error was brought in the *Exchequer-Chamber*; one variance was, the name of the Foundation is the Master of the Hospital, & *Capellanus dicti Hospitalii.* But in the Lease, *Capellanus* is not immediately annexed to the Master; but this was overruled to be good enough. Another variance was in the Foundation, the words, *Hospitalis Regis Henrici septimi*; and in the Lease the words are *Hospitalis Regis H. 7. nuper Regis Angliæ*; so the word (*nuper*) is Surplusage. But *per Cur.* this is no variance in sub-

Substance. But the main variance insisted on was the variance *de le Savoy & vocat' le Savoy*. *Coke De S. & vocat.* argued that it is a material Variance; the word (*de*) *S.* the difference. *le Savoy* designs a Place, so as by the word *de*, the place is become Parcel of the Name. But this word *vocat' locum non denotat*, but only the very Name.

2. This word *de* supposeth a Place before the Foundation, as the Place on which the Hospital was erected was called *le Savoy* before the erection of it; but these words (*vocat' le Savoy*) supposeth the same name *Savoy* was imposed upon the Foundation. 3. (*De le Savoy*) is matter of Verity and Certainty (*vocat'*) but matter of Reputation. The name of a Corporation is as the name of Baptism to a natural Man, and there should be no variance; nay the Law requires more certainty in the name of a Corporation, than in the name of any particular Person. When an Infant is born he is presently a perfect Creature, and the giving his Name is not matter of Necessity, but of Policy for distinction; but as to a Corporation, the name is of the Substance and Essence of it, and without their Name they are but a Trunk; but the matter was compounded. *Hobart* seems to say it was a hard Judgment in the *Exchequer*. It was said in that case by the Lord Chief Baron *Manwood*, four things are only to be respected in the name of a Corporation. 1. The names of the living Persons who are the Corporation, as here the Ministers and Chaplain. 2. The House whereon they are Resident, and make their Abode. 3. The name of the Founder. 4. The name where the place of their Abode is builded and erected.

The College of *Eaton* was incorporated by the name of *præpositi Collegii regalis Sanct' Mariæ de Eaton* *juxta Windsor*, and a Lease is made by the name of *præpositi & sociorum Collegii Regalis de Eaton*, and this was held a void Lease. 4 *Marr. Dier* 150.

But

Peterborough.

But the Dean and Chapter of *Peterborough* were incorporated by the name of *Decanus & Capitulum Ecclesiæ Peterburgensis*, and they make a Lease by the name of *Decanus & Capitulum Ecclesiæ de Peterborow*, and held good enough, because the variance was not in matter of Substance.

Boston.

The Guild of *Boston* in *Lincolnshire* was incorporated by the name of the Guild of St. *Nicholas*, and our Lady the Virgin *Mary*, and they made a Lease for Years by the name of the Guild of our Lady the Virgin, and St. *Nicholas*, *Religione quadam motus nomen Virgini Mariæ in Charta dimissionis prappon' nomini Sancti Nicholas*. And it was adjudged a void Lease for the variance aforesaid. 1 Leon. 193.

College Hospital.

The Plaintiff in Ejectment declared of a Lease made by the Master of the House or College of St. *Thomas* in *London*, it was given in Evidence, that the Lease given in Evidence was not the Lease whereof the Plaintiff had declared; for the Original Lease shewed in Court is Master of the House or Hospital, and the Lease specified in the Declaration is Master of the House or College. Some Justices conceived it not any material Variance; for by them College and Hospital are all one. 1 Leon. 215. *Clemens* and *Smith*.

Trin. College in Cambridge.

The Dean and Chapter of St. *Maries* in *Exeter* make a Lease by the name of Dean and Chapter of *Exeter*, this is no material Variance. 2 Leon. 97. *Willis* and *Fermin*.

King *Henry* 8. incorporated the Scholars of *Trinity College* in *Cambridge*, by the name of Masters, Fellows, and Scholars, *Collegii Sancti & Individuæ Trinitatis*, in the Town and University of *Cambridge*. And in 6 *Edw.* 1. they made a Lease by the name of *Masters and Fellows of the Trinity College* in *Cambridge*, leaving out the *University*. *Yelverton* argued, That it is a void Lease,

as

as if it had been made by the Masters and Fellows of *Trinity College* in the Town, and left out the University of *Cambridge*, it had been void. *Walter contra*, Who cites the Opinion of the Lord *Pophams* in *Burton's Case*, that a Corporation cannot be limited to a County, as *probos homines*, of such a County, or *Trinity College* in such a County, but it ought to be restrained to some certain place. Beside, University is not Local, but Personal, as *K. H. 3.* intending to keep a Parliament at *Oxon.* directed his Writ to the Chancellor and University of *Oxon.* commanding them that they should remove the University to such a Place till the Parliament should be ended, and after sent his Writ, and willed them to return: So that this appears, University is Personal, and not Local. And if it were a Place it could not be removed. The Dean and Canons of *Windsor* made a Lease for years, by the name of Dean and Canons of *New Windsor*, and this was adjudged no material Variance. The Lord *North's Case* was this, *Christ-Church* in *Oxon.* was incorporated by the name of Dean and Canons of *Christ-Church* in *Oxon.* and they made a Feoffment by the name of the Dean and Canons of *Christ-Church* in the University of *Oxon*, and it was adjudged a good Feoffment. *Brownl. 243.*

Corporation not to be limited to a County.

University.

The Case of the Dean and Chapter of *Christ-Church* is more fully reported in my Lord Chief Justice *Pophams Reports*, p. 56. under the name of *Button* and *Wrightmans Case*. The Dean and Chapter of *Christ-Church* in *Oxon.* were incorporated by *K. H. 8.* by his Letters Patent, by the name of *Dean and Chapter of the Cathedral Church, &c. Oxford.* of the *Foundation of K. H. 8.* and so to be called for ever. The Dean and Chapter being seized of an House and Land in Fee *in jure*, &c. by the name of the Dean and Chapter, *Ecclesiæ Cathe-*

Dean and Chapter of *Christ-Church* in *Oxon.*

Cathedralis Christi in Academia Oxon. ex fundatione K. H. 8. enfeoffed Lord North, by Deed dated 1 Ed. 6. the Plaintiff claimed by Lease, under Q. Elizabeth, and in a special Verdict it was found that the City of Oxford, and the University of Oxford were all one. *Per Popham, Gaudy and Clench.* This is not such a Misnomer as shall make the Feoffment void; for suppose it had been *Decanus & Capitulum Ecclesiæ Cathedralis Christi in Civitat. Oxon.* it had been good; for *Oxon. & Civitas Oxon.* are one and the same. So it is of an Hospital to be erected by the name of the Hospital of St. John in St. Clement, and they make a Grant by the name of the Hospital of St. John in the Parish of St. Clement, its good, for it appeareth to be the same. And *per Popham*, the place in a Corporation may be well resembled to the Sirname of a Man; and its not good to say Mayor and Commonalty, Dean and Chapter, without saying of what place. And in the Case of a Corporation it sufficeth to have a sufficient demonstration of the Place where the Corporation is, albeit it be not by the precise words comprised in the Charter, and the naming *Academia Oxon. pro villa Oxon.* to erect an Hospital by the name of an Hospital in the County of S. or in the Bishoprick of B. &c. is not good, because he is bound to a Place too large, and uncertain; but a College erected in *Acad. Cantabr. or Oxon.* is good, because it tends but to a particular Place, as a City, Town, &c.

Sufficient demonstration of a place.

C A P. XIII.

What Act done by an Abbot or Bishop, &c. shall bind their Successors or not.

Sole Corporation cannot disclaim a Seigniorie. Cannot divest a Fee which is vested in them. Disclaimer in a Quo Warranto shall bind their Successors. How a sole Body Politick might have made a Discontinuance. Stat. 1 Eliz. 13 Eliz. and 1 Jac. c. 3. restrain Discontinuances. What things shall go in Succession. Where the Successor of a Body Corporate shall have Chattels and Debts upon Bond, and other things. Of the Successor of the President of the College of Physicians. Of Visitors.

AN Abbot or Prior, Bishop, Parson, &c. Sole Corporation or other sole Corporation, cannot disclaim this Seigniorie in a Court of Record so as to extinguish it. For the Claim cannot divest any Fee which is vested in their House or Church. For the Wisdom of the Law would never trust one sole Person with the Disposition of the Inheritance of the House or Church. *Aliter* of a Bishop and Chapter, Parson, Patron and Ordinary.

But in a *Quo Warranto* at the Suit of the King against a Bishop or Abbot for Franchises and Liberties, if the Bishop or Abbot disclaim in them, this shall bind their Successors.

If an Abbot had acknowledged the Action in a Writ of Annuity, this should have bound the Successor, because he cannot falsifie it an higher Action and there must be an end of Suits, *expedit. &c.*

But

But if the Abbot levy a Fine or acknowledge the Action in a *præcipe quod reddat*, the Successor shall be bound *pro tempore*; but he may have a Writ of Right and recover the Land.

Debt on Bond *versus* Abbot, the Abbot acknowledgeth the Action and dies, the Successor shall not avoid Execution, though the Bond was made without assent of the Convent, for he cannot falsify the Recovery in an higher Action, & *res judicata pro veritate recipitur*. So of a Statute or Recognizance. 1 *Inst.* 102. b. q. 103. a.

How a sole
Body Politick
may make a
Discontinuance.

Corporations
Aggregate
cannot.

Discontinuances
restrained
by Statute.

A sole Body Politick that hath the absolute Right in them, as an Abbot, Bishop, &c. may make a Discontinuance at Common Law; but a Corporation aggregate of many, as Dean and Chapter, Warden and Chaplain, Master and Fellows, &c. cannot make any Discontinuance; for if they joyn the Grant is good; if the Dean, Warden, Master, or Mayor make it alone, it's void and worketh a Disseisin. But by Stat. 1 *Eliz.* 13 *Eliz.* c. 10. & 1 *Jac.* c. 3. Bishops and all other Ecclesiastical Persons are disabled to alter or discontinue any of their Ecclesiastical Livings; for by those Statutes, if the Bishop, Dean, Master of any Hospitals, &c. *vide le Stat.* here, 1 *Inst.* 342. a.

What things shall go in Succession.

Where a Successor of a Body Corporate shall have Chattels and Debts upon Bond made to his Predecessors, and of other things. *Visitors of a Corporation.*

ON a Bond made to a Bishop, Parson, Vicar, Master of an Hospital, or other sole Body Politick, the Executor or Administrator shall have the Action, except in the Case of the Chamberlain of London, where it goes to the Successor. But in

the

the Case of a Corporation aggregate, Dean and Chapter, Mayor and Commonalty, the Successor shall have the Action, 4 Rep. 68. *Fullwood's Case*. Cro. Eliz. 480. *Bird and Wilsford*.

If a Lease for Years be made to a Bishop and his Successors, and the Bishop dies, yet this shall not go to his Successor but to his Executor, 1 Inst. 46.b.

If the Parson recover an Annuity, and afterwards Arrears incur, and after the Parson dies, the Executor of the Parson shall have the Arrears, and not the Successor, because he might make his Will. *Aliter* in case of a Master and Convent.

The Patent confirmed by Act of Parliament is, that the Offender in practising Physick in *London* without Admission by the Colledge of Physicians shall forfeit 5 l. for every Month, *unum dimidium Regi, alterum dimidium dicto Præsidenti & Collegio*. If the President recover in Debt against the Offender and dies, the Successor shall have a *Scire Facias* to execute it, and not the Executor: for the Predecessor recovers this as due to him and the College. 1 *Rolls Abr.* 515. *Atkins and Gardner*.

Visitors of a Corporation.

If the Hospital be Lay, the Patron shall visit; if Spiritual, the Bishop shall visit, 10 Rep. 31. unless special Visitors be appointed.

C A P. XIV.

Of By-Laws, chiefly in London.

Power to make By-Laws incident to a Corporation. Acts of Common-Council. What By-Laws are good, and what not. By-Law concerning Land. Acts of Common-Council censured as to Form. Of By-Laws restraining Trades, Stat. 19 H. 7. c. 7. Allowance by whom. Monopoly. Ordinances pro bono publico. The Case of Blackwell-Hall. By-Laws by Inhabitants of a Village. In what case a Corporation cannot make a By-Law. The Town of Colchester's Case. Freedom of a Corporation to be had three manner of ways. The case of Wharfage at Puddle-Dock, with an Abstract of the Argument. No Forfeiture of the Subjects Goods may be by a Charter. Nor Imprisonment. Ordinance of the Merchant Taylors Company. A By-Law of the Bricklayers Company. Company of Lock-Smiths in Durham. What will not amount to a Corporation. The Ordinance of Blackwell-Hall. By-Law not to take Apprentice the Son of an Alien. Ordinances restraining Apprentices that have served their Time. Forestalling of Fish. Imprisonment not for the Offence of a By-Law, but the Contempt. In what cases Imprisonment by a Corporation is lawful. Scavage Debt for a Duty growing on a By-Law. By-Law as to the Number of Cars in London. Custom may create a Monopoly. Winchelsea By-Law as to Beacon. Oxon By-Law against Night-Walking. By-Law not to oblige those which are not within their Body. Strangers where not to take notice of the By-Law
of

of the Butchers in London. By-Laws to prevent the Excreſcence of Trade. Reſtraint as to the place of Trade. Acts of Common-Council in London.

PER *Hobart*. That though Power to make By-Laws is given by ſpecial Clauſe in all Incorporations, yet it is needleſs : For it is included by Law in the very Act of Incorporating, as is alſo the Power to ſue, to purchaſe, or the like. Incidents to a Corporation.

For as Reason is given to the natural Body for the governing of it; ſo the Body Corporate muſt have Laws as a Politick Reason to govern it : But theſe Laws muſt ever be ſubject to the general Laws of the Realm, as ſubordinate to it. And if the King do in his Letters Patents of Incorporation make Ordinances himſelf, as was the caſe of *Norris* and *Staps*, yet theſe are alſo ſubject to the ſame Rule of Law.

The Cuſtom of the City of *London* is, that the Mayor, and Aldermen, and Four Perſons choſen out of each Ward by the Commonalty may make Ordinances, which they call Acts of Common-Council, and they ſhall bind every Citizen and Freeman. There is Difference in making Laws by a Corporation : A Corporation may make an Act for the better executing of any Law eſtabliſhed at the Common Law ; but new Laws they cannot make : And the By-Law may be good by Cuſtom : And they may appoint a Penalty, for to what purpoſe otherwiſe ſhould they make an Act ? and Debt lies. The Reason of By-Laws.

3 *Leon.* 264. Chamberlain of *London's* Caſe.

An Act of Common-Council, according to the Cuſtom of the City of *London* was, by which it was decreed, ' That none ſhould bring any Sand, ' nor ſell nor uſe any within the City or Suburbs of ' *London* but that only which was taken out of the ' River of *Thames*, &c. And that if any did the contrary

Acts of Common Council censured as to the Form.

‘ contrary, that he should forfeit for the first Fault
 ‘ 5 *l.* and for the second Fault 10 *l.* to be recover-
 ‘ ed in an Action of Debt, wherein no Effoign, Pro-
 ‘ tection or Wager of Law should be allowed.

The Court was greatly vexed at this Ordinance, not only for the Matter and Substance of it, but for the Form of it. *Thames* Sand was much worse than the *Land* Sand, and yet the Price of the same was greater, and the measure less; and it's against reason that any Freeman should be restrained against Merchandizing and selling. And the Court said, That they were very presumptuous in making Acts so Parliament like, that no Effoign, &c. and stirred up the Plaintiff in the next Parliament to exhibit a Bill against them for it. *Godb.* 106. *B. R.* *Mitch.* 28 & 29 *Eliz.*

Of By-Laws restraining Trades.

PER *Hobart* in *Norris* and *Staps* his Case, p. 210. it's a great Question, Whether a new Corporation, having no Prescription to appropriate and exclude others, can make a Law to exclude Persons to use an Art or Trade in their Town, whereunto they were not Apprentices, within the same Town, though they served their Apprenticeships to it elsewhere? so that the Question is between the Particular Priviledges of Towns, and the General Liberties of the People, and fit to receive a Determination.

The Preliminaries in the Case are:

1. The Common Law did not forbid any Man to exercise any Trade, were he trained up to it or not, or to exercise more Trades than one. This was prohibited by Stat. 27 *Ed.* 3. c. 6. but repealed afterwards.

2. The

2. The Law as it now stands, forbids not any one to use any Trade privately; as to be my Taylor in my House, for that is not a Trade but a Service, and it is at my own Peril be it well or ill done. This is resolv'd in the Taylor of *Ipswich's* Case, 11 Rep. One may be a private Cook, Baker or Taylor, though never Apprentice.

3. That the Law as it now stands forbids no Man to exercise a Trade Publickly, that hath been an Apprentice to it wheresoever. The Stat. 5 Eliz. restrains it not.

The King incorporates the Master, Warden and Commonalty of the *Tailors* and *Cloathworkers* of *Ipswich*, and granted that they shall have *Plenam potestatem & auctoritatem facere & constituere rationabiles Leges Ordinationes & Constitutiones in scriptis quæ eis viderentur salubria bona utilia honesta & necessaria secundum eorum discretionem pro bono regimine & gubernatione &c. Societatis prædictæ &c.*

But by the 19 H. 7. c. 7. it is enacted, That no Masters, Wardens, and Society of Crafts and Mysteries shall make any Acts or Ordinances, nor to execute any Acts or Ordinances *in exheredationem seu diminutionem Prærogativi vel aliorum aliquorum nec contra commune proficuum populi nisi idem Actus & Ordinationes examinati & approbati forent per Cancellarium Thesaurarium Angliæ capitulum Justicium utriusque Banci vel tres eorum vel alios coram Justiciariis Assizæ in eorum itineribus sub pœna forisfacti 40. l. pro quolibet tempore quo ipsi in contra facerent.* Then set forth the By-Law, and then shew this Allowance by the Judges of Assize. 11 Rep. 53. a. b.

19 H. 7. c. 7.
of Allowance.

The Ordinance that prohibited him to use his Trade until he had presented himself to the Master

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and Wardens of the Society, or until they allowed him to be a Workman, this is against the Liberty of the Subject, and the Stat. 5 *Eliz.* restrains him, not having not served him seven Years, and is a means of extortion of Money from young Tradesmen. *Quer.* If it had been laid by way of Custom and Prescription as in *Sleep's Case*, and in the Mayor and Commonalty of *Colchester's Case*, *Carter's Rep.*

The Stat. 19 *H. 7. c. 7.* doth not corroborate any of the Ordinances made by any Corporation which are so allowed and approved; but leaves them to be affirmed as good, or disaffirmed as unlawful by the Law. The sole Benefit which the Corporation gains by such allowance is, That they shall not incur the Penalty of 40 *l.* mentioned in the Act, if they do put in use any Ordinances which are against the Prerogative of the King, or the common Profit of the People. 11 *Rep. 54. b.*

The Company of *Merchant Taylors* in *London* had Power by Charter to make Ordinances for the better Government of the Company, so that they are Consonant to Law and Reason. They made one Ordinance that every Freeman of the same Society who should put any Cloaths to be dressed by any Cloathworker, not being Brother of the same Society, should put the one half of his Cloaths to some Brother of the same Society on pain of Forfeiture of 10 *l.* and to distrein for it. It was adjudged this Ordinance was against the Common Law: For every Subject by the Law hath Freedom and Liberty to put his Cloaths to be dress'd by what Cloathworker he will, and not be restrained to certain Persons; for this in effect would be a Monopoly. *Davenant* and *Hurdis* cited 11 *Rep. 8. b.*

But if Ordinances be *pro bono publico*, then they are not against Law. Act of Common Council was, That if any Citizen, Freeman or Stranger within

Monopoly.

Pro Bono Publico.

within the City, shall put any Broad Cloth to sale within the said City before it be brought to *Blackwell-Hall* to be viewed if it be vendible, and that Hailage be paid for it (*videl.*) one Penny, that he shall forfeit for every Cloth 6 s. 8 d. and resolved, The Case of
Blackwell-Hall.

1. That time out of Memory they of *London* have used to make Ordinances. And 2. Their Customs are confirmed by Act of Parliament. 3. There are divers Statutes made for the true making of Woollen Cloth; and to the Intent that they should be better executed without Deceit, this Act of Common Council was made to have them viewed in a publick place. 4. The assessing of one Penny is *pro bono publico*, having regard to the Benefit the Subject enjoys by such Ordinance, and is like to Pontage, Murage, Toll, &c. 5. The Penalty being inflicted upon the Offender, although he were a Stranger, is lawful, being done within the City. 5 *Rep. Chamberlain of London's Case.* 3 *Leon.* p. 264.

Note. Not only Corporations made by Letters Patents or Prescription, but Inhabitants of a Village may without Custom make some By-Laws; Inhabitants of
a Village. for they are by Common-Law (as it were) incorporate for some Necessities both common and peculiar to that distinct Body, as Reparation of a Church or High Way, &c. and in such case the major part shall bind all without a Custom. Also the Tenants of a Manor may for their common good make By-Laws, but then it must be by Custom. *Hobart* 212. *Rep.* 63.

Corporations may not make Ordinances without Custom or Charter of the King, unless for things which concern the Publick, as Church, Highways, &c. In what Cases
Corporations
may not make
By-Laws.

In Debt, The Plaintiff declares that the Town of *Colchester* time out of mind was an ancient Burrough and incorporated by the Name of Bailiff The Town of
Colchester.

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and Commonalty till 11. Car. 1. and then they were incorporated by the Name of Mayor and Commonalty, and enabled to hold such Franchises as they enjoy'd by any Name. They set forth, That time out of Mind there have been two Customs:

1. That no Stranger Artificer that is not free of the said Burrough shall use any Art, Mystery or Occupation within the same Burrough.

2. That the Bailiff and Commonalty used to make reasonable By-Laws and Ordinances about Tradesmen and Artificers, and used to impose reasonable Pains against Offenders.

They made Two By-Laws:

1. That no Foreigner who should be commorant in the Burrough or Liberties should take directly or indirectly into his House to use any Art, Mystery or Occupation, any Journyman, Apprentice or poor Boy, but what shall be resident in the Town or Liberties thereof, and disposed by the Mayor and Commonalty or Common Council, *sub pœna, &c.*

2. That no Foreigner at any time, directly or indirectly, shall open his Shop or set up his Trade within the said Burrough till he hath compounded with the Town for his Liberty. The Custom is good.

Bridgman held the first By-Law naught, the second good. The Custom is good, and when they say By-Laws for restraint of Trade ought to be taken strictly, I deny that when they are to strengthen a Corporation and to regulate Trade. Now the Custom being good that no Foreigner shall exercise a Trade within the Town, this is not properly a By-Law as a Relaxation; for the Custom
restrained

restrained them, and by this By-Law upon Com- Freedom three
position they may use and exercise a Trade. Now manner of ways
a Man may be freed three manner of ways, 1. By
serving an Apprenticeship. 2. By being born a
Freeman, as the Eldest Son. 3. By Redemption;
they may buy their Freedom. If they will admit
him into Priviledges it is reason they should have a
Sum of Money; did the Charter cost nothing?
Carter's Rep. 114. Mayor and Commonalty of
Colchester against Goodwin.

Trespas for entring his House and taking ten By-Laws for
Pewter Dishes, value, &c. The Defendant pleads levying Fines
Incorporation of the Taylors at *Exeter* by Patent by Distress and
Ed. 4. with Power to make By-Laws, and a By- Sale of Goods.
Law was made, That if any Member spake any ill.
scurrilous or disgraceful Language to another of the
Company, *ad aliquam conventionum Communitat'*
prædict' that he shall forfeit 3 s. 4 d. to be levied
by distress and sale of the Goods, and that the Plain-
tiff at the Convention of a Company said, *The Ma-*
sters of the Company are a Company of Pickpocket
Reges, let them kiss my Arse, and if any of them
dare come to my House I'll knock out their Brains;
by which he Forfeits 3 s. 4 d. and for Non-Pay-
ment the Beadle of the Company by their Warrant
sub Communi Sigillo to levy the 3 s. 4 d. by Di-
stress and sale of the Goods, &c. The Plaintiff
demurs generally. It's not said that they sold them,
or what became of the Overplus. To levy by Di-
stress is legal; but not by Distress and Sale. It's
void by Law. 3. *Levins 281.* *Clarke versus*
Tucker.

Debt by the Mayor, &c. of *Oxon* versus *Wild-* By-Law if any
goose, and Declare, That *Civitas Oxon'* is anti- Person be *debit'*
qua Civitas & Corporat' per nomen Major, &c. elect' &c. and
and that time out of mind they used to make By- refuse he shall
Laws *pro bono Regimine civitat' & Civium &* forfeit, and
Burgensium, and to elect a Chamberlain *de Bur-* faith 7. S. was
genfib' man. faith not that
he was a Free-
man.

gensibus prædict. for a Year, and that 17 Aug. 1 Regis nunc they made a By-Law, *Quod si aliqua persona foret debui' elect'* to be Chamberlain, & recusaret suscipere Officium, he shall forfeit 10 l. to the Mayor, &c. and then shews that 30 Sept. An. 1. *prædict. secundum Consuetudinem prædict.* the Defendant *debiu' modo electus fuit in Officium illud ipso existen' civis & libero hominum civitatis prædict.* and that he refused to accept it, &c. The Defendant demurs upon the Declaration, & per tot' Cur. Judgment for the Defendant. For the By-Law to elect *aliquam personam* is void, for by it they may elect any Stranger, and the Words *debito modo elect.* will not cure it; for this goes only to the manner of Election, and not to the Person to be elected, it ought to have been *si aliquis Civis five Burgens. foret elect.* 3 Levins 293. Mayor and Commonalty of Oxon versus Wildgoose.

C. F. Chamberlain of London distreined the Goods of W. R. for a Pain assessed by the Common-Council of London; and upon the return of the Sheriffs of London appeared to be this. They returned the Usage and Custom of the City of London to make By-Laws by their Common Council; and that Puddledock near Paul's-Wharf was an ancient Place for lading and unlading of Ships, Boats and Lighters, and that it was in decay, and that for Reparation of it it was ordained that every Ship that should be laden and unladen there should pay a Penny for every Load which he should carry from thence, and that every Carman for every Load which he should carry from thence should pay a Penny; and that the said W. R. had carried divers Loads, &c. and that the City did grant this Assessment to the Chamberlain, in Recompence of the Charges which he should expend about the said Reparations. And upon this Certificate a *Procedendo* was prayed.

Argued,

Puddledock.

Argued, That this was a good By-Law founded upon Custom and Prescription, so *Taverner* and *Cromwell's* Case. *Dier* 322, 323. where the Lord of a Mannor made a By-Law, That no Tenant should put his Beast into the Common before the Ringing of a Bell, upon pain to forfeit 12 *d.* and adjudged a good Ordinance. And this is for the Weal Publick of that part of the City and of all the City. 42 *Eliz.* *Wiseman's* Case, Wharfage by Prescription is good. And 44 *Eliz.* *Hankshead* and *Wood's* Case, where Toll was paid for maintenance of the Walls of *Salisbury*, for every Pack of Wool which passed by a Penny; and held to be a good Imposition. And the Case of *Gravesend*, where there was an Imposition, that every one which landed at *Gravesend* should pay a Penny towards the Reparation of the Bridge, and good by the better Opinion of 11 *H.* 6. this By-Law is not against the Rules of Law, nor the Prerogative of the King, nor the Benefit of the Subject. For by the Stat. 4 *H.* 7. c. 15, 16. that the City of *London* is Conservator of the River of *Thames* from *Staines* to *Yealand* in the County of *Kent*. Also by the Stat. 28 *H.* 8. c. it is ordained that the River shall not be stopped; *Ergo*, this By-Law is for the better Execution of those two Acts of Parliament; and it is for the Benefit of the Subject, because before none could land any thing there without Danger, but now by this means the Rubbish is cleansed, and a Stranger shall have a quick and safe Return; and the Penalty on the Cloth as 5 *Rep.* is a stronger Case than this, because the Dock hath continual need to be cleansed.

That this is not a good By-law, because it is against the Common Law, the Weal Publick, and against the Liberty of the City it self, by the Council 6 *Jac.* it was ordained, that as well Citizens as Strangers should pay, and the King could not grant it

it to the City, for it is an Imposition not allowed by the Law; first against Citizens, because tho the Tax may be for the general Good of the City, yet it cannot be imposed or Taxed upon particular Person. Also this Dock was never repaired at the general Charge of the City, but by the particular Ward of *Baynards Castle*. Also the Citizens of *London* shall not pay Toll in any place of *England*; and here the Dock stands upon the Passage of the City, and every Wharf is as a Gate of the City, and therefore they may as well impose a Tax upon every one which goes out of any of the Gates of the City (which is unreasonable and against Law) as out of this Wharf. Also here is no certain Profit to the City, but this Taxation is farmed for 21 years for 105. a year to the City, which if it were a general Charge there ought to come some general Benefit by it to the City. It is not like to the Case of 5 *Rep.* 62. because that was for the general good of the Realm, and in the furtherance of the Execution of divers Statutes. In 29 *Eliz.* in *B. C.* it was ordained by the Common Council, that none should use any Sand in the City, except it were taken out of the *Thames*, and it was adjudged to be against Law, and the Mayor's Officer was committed to Prison. And this Dock did heretofore belong to the Archbishop of *Canterbury*, and hath ever been free. Also the Assessment is to be levied, and continue 21 years together, which is unreasonable; and it hath been adjudged here that an Assessment levied for 21 years for Reparations of a Church was not lawful. Note, The case of digging of Sand was not good, because thereby a Man was prohibited to use his own Inheritance. *Ter. Mich. Ann.* 7. *Jac.* 1. *B. R.*

Wharfs.

Dying with
Logwood no
forfeiture of a
Subject's goods
by a Charter,

H. 6. Granted to the Corporation of Dyers in *London* power to search, &c. and if they find any Cloth dyed with Logwood, that the Cloth shall be

be forfeited. It was adjudged, that by a Charter no Forfeiture can be made of a Subjects Goods.

A Corporation regularly cannot impose *de novo* a small payment on the People. But by help of a Custom or Prescription, for it, as in *London*, it may be good; and such a reasonable Ordinance may be made, and a Penalty or Fine set that is reasonable for breach of it, and appoint that there shall be a Distress taken, or Action of Debt brought for it; this may be good. 5 Rep. 63.

But they cannot annex Imprisonment, nor a Forfeiture of Goods bought or sold, for this is against Law. Nor Imprisonment.

The Company of Merchant Taylors in *London* made an Ordinance that every Brother of the same Company that shall put any Cloth to be dressed by any Clothworker, not being a Brother of the same Society shall put the one half of the same Cloth to some Brother of the same Society that doth exercise the Art of Clothworking under pain to forfeit 10 s. and to distrain for it. It was adjudged void and against the Liberty of the Subject, that one may put his Cloth to dress where he will, and may not be restrained from it. 11 Rep. the Case of Monopolies. Merchant-Taylors.

The Common Council in *London* ordain, That the Bricklayers shall not be Plaisterers with Lime and Hair, but with Lime and Sand, under pain to forfeit 40 s. and that the Lime and Hair belongeth to the Plaisterers. This was resolved by the Court to be a good Ordinance; for it is for the ordering, and not for the destruction of Trade; for (for any thing appeareth) it is indifferent to which of the Trades it doth belong, and so the Ordinance doth but determine the Question amongst the Companies. Bricklayers.

Goodier 21 Jac. B. R. brought Trespass against *Shaw* for an Assault and Battery, and wounding of his Servant, and taking 12 plate Locks. Defendant Seizing of Locks in *Durham*.

The Law of Corporations.

dant pleads Not Guilty, as to Assault and Battery and Wounding, and as to the taking the Locks away he pleads a special Plea of Justification by virtue of Letters of Patents of Incorporation granted to the Locksmiths of *Durham*, by *Cuthbert* Bishop of *Durham*, who had *Jura Regalia*, within the County Palatinate of *Durham*, and that by virtue of this Charter the Locks not being good, he, as Warden of the Company did take them. To this Plea the Plaintiff demurred, and shews for Cause, that it appears not by the Plea that the Blacksmiths are a Corporation created by the Bishop ; but only that the Customs used amongst them, in order to the regulating of their Trade were confirmed by the Bishop, which doth not make them a Corporation. *Plo. fo. 199. and Long 5to. fo. 40, 41. 2.* It doth not appear by the Charter that they have any Authority to take away ill made Locks ; and by *Rolls C. 7.* it doth not appear that any Order was made by the Corporation to take away the Locks, and therefore it was done without Warrant, though the Corporation had such a Power. But besides, it will be very hard to maintain the Locksmiths to be a Corporation, because the Bishop confirmed their Orders. Judgment *pro Quer. Stiles Rep. 298.*

What will not
amount to a
Corporation.

A By Law was made to this purpose, That Commodities be sold on the Market-day in publick, and not in Private or Secret, and it seems to be good ; and no Prescription against it shall be admitted good. For in *London* this Ordinance was made, That if any Citizen, Freeman, or Stranger, that is within the said City shall put any Broad-cloth to sale within the City of *London*, before it be brought to *Blackwell-hall* to be viewed and searched, so that it may appear to be vendible, and before there be 4 *d.* paid for Hallage for every Cloth that he shall forfeit 6 *s.* 8 *d.* and that the Chamberlain shall have his Action of Debt, adjudged good.

Blackwell-hall.

The

The Corporation of *St. Albans*, when the Term was to be there, rated all the Inhabitants and Burgesſes a ſmall Sum to build Courts, and ordained, That if any Burgeſſe reſuſed he ſhould be Impriſoned, adjudged to be naught, but reſolved they might have inflicted a reaſonable Penalty, and appointed it to be levied by Diſtreſs, or that an Action of Debt might be brought for it.

The City of *London* made a By law, that none of ſuch a Trade ſhould take to his Apprentice the Son of an Alien, and if he did, that the Obligation and Covenants made between them ſhould be void. It was adjudged a void Order, and that the Covenants and Bonds binding that Apprentice were good. *Dogrell and Powked, 37 Eliz.*

Not to take
Apprentice of
the Son of an
Alien.

An Ordinance made by any Maſter, Wardens, or Fellowship of any Craft, Guilds, or Fraternities that every Apprentice ſhall pay at his firſt Entry into the Common Hall into the Wardens of the ſame Fellowship for his entry into his Fellowship above 2 s. 6 d. or for his Entry when his Term is expired above 3 s. 4 d. is againſt Law, by the Statute 19 H. 7. 7. 22 H. 8. 4. 28 H. 8. 5. So an Order that they ſhall not ſet up after they have ſerved their Time, and are Freemen, or open any Shop, Houſe, or Cellar as Freemen, without the Agreement or Licence of the Maſter, Warden, or Fellowship of the Company. This Ordinance is void by the Statute of 28 H. 8. c. 5. So it is if it be that every ſuch Apprentice ſhall make Oath or Entry into Bond, to the Warden, &c. not to ſet up Shop otherwiſe. 28 H. 8. c. 8.

Ordinance re-
ſtraining Ap-
prentices that
have ſerved
their time.

Upon *Habeas Corpus* from *Newgate* the Sheriffs returned, that the Cuſtom of the City was, If any Freeman hath Foreſtalled any Fiſh coming to any Market within the City, and Complaint thereof made to the Court of Aldermen, and he appearing there and confeſſing the ſame, and they ordain, he ſhall

Foreſtalling of
Fiſh.

shall desist from such Forestalling, and he will not promise to obey, but declares in Court that he will not obey their Orders, that the Court, time out of Mind, had used to commit such Freeman until he signifies to the Court that he would conform himself. It was objected that this Custom is not good; for a Custom to commit a Man for Forestalling is void, especially to remain without Bail or Mainprize. This imprisonment looks in the face of *Magna Charta*, which saith, *Nullus liber Homo imprisonetur*, &c. In all Offences finable the Imprisonment is only till the Fine be paid. *Brook Tit. Imprisonment* 100. But it was said, and the Court seemed to agree, that this Imprisonment is not for the Forestalling, but for the Contempt to the Court; it is returned, that he declared he would not obey their Order. *Per Twissden*, It must be allowed that they have such power, for they are a Court of Record. *Langham* was committed for refusing to take the Oath usually administered to Sheriffs, and resolved to be good, because it concerned the Government.

Imprisonment,
not for the Of-
fence but for
the Contempt.

In what case
Imprisonment
by a Corporati-
on is lawful.

The City hath the regulation of Trade and Orders made by them, that one Man shall not use the Sign of another; and for the distinguishing of Trades (that is to say) the Plaisterer shall not use the Trade of a Bricklayer, and such like have been good. 1 *Ventr.* 115. The Case of the City of *London* and *Coates*.

Scavage.

Debt was brought for a Duty accrewing to the City for Timber imported, called Scavage. The Defendant tendered his Law, but the Court overruled the Wager of Law; for the Duty it self is by Prescription, and that confirmed by Act of Parliament. Debt for a Duty growing on a By-law, if the By-law be authorized by Letters Patents no wager of Law lies. 1 *Ventr.* 261. Mayor and Commonalty of the City of *London* against *Dupestier*, so is the City of *London* against *Gore*.

Debt for a Du-
ty growing on
a By-law.

Assumpsit,

Assumpsit was brought for the Duty of Scavage, and declared upon the Custom of *London*, that every one that exposeth foreign Goods to Sale, which had been entred at the Custom-House, shall pay so much for shewing of them; the Action lies, tho the Customs are confirmed by Parliament, and so a Duty on Record. For Assignee of Commission of Bankrupts may bring *Assumpsit*, and yet the Debt is assigned by Act of Parliament. 1 *Ventr.* 298.

Scavage.

By-Law in *London*, that there shall be but 240 Carrs allowed to work within the City, provided that all Persons may send their own Carrs to the Wharfs, &c. and carry Goods in their own Carrs from the Wharfs, except such as shall be Traders and Retaylers in Fuel, good By-Law, and the Custom should be alledged in the Plaint; for Custom may create a Monopoly, as the Case in the Register is, That none shall exercise the Trade of a Dyer in *Rippon*, without the Archbishop of *York*'s Licence. But the Court doubted whether this were a reasonable By-law, because it would restrain the Wood-mongers from bringing the Wood home in their own Carrs; so that tho they brought it in the Country Carrs as far as the Liberties of the City, they must then Unlade and put it into the City Carrs, which would be great Inconvenience. 1 *Ventr.* 96. *Bradnox's Case*.

The number of the Carrs in *London*.

Custom may create a Monopoly.

A *Certiorari* to the Mayor, Jurats, and Commonalty of the Town of *Winchelsea*, to remove an Order or Decree made by them, they return that the said Town of *Winchelsea* hath been, time out of Mind, incorporated by the name of Mayor, Jurats, and Commonalty of *Winchelsea*, that all the Cinque-Ports, by reason of their situation upon, or near the Sea-shoars, have, and ought to keep Beacons, Watch-houses and Guard, Night and Day; and for the better maintenance thereof, the said Town

Winchelsea.

Town of *W.* at their Common-Hall used to make Taxes, Rates upon every Inhabitant and Occupier of House and Land, lying within the said Town, or Liberties thereof, that 1 *M-y.* 32 *Car.* 2. They made a Tax of 6 *d.* per Pound for the maintenance of the said Beacons and Watch-house, according to a Schedule annexed to the said Tax, and that there was no other Order made. It was objected, That is not set forth, that the said Beacons and Watch-house were in Decay, and so the Rate needless. But *per Cur.* It is well enough. For; 1. It would be dangerous to expect till they came in Decay, upon any Invasion. 2. It shall not be presumed that the Inhabitants would Tax themselves unnecessarily, and they all concur in the Taxation. *Raym.* 448. The Case of the Town of *Winchelsea*.

Oxen.

By-law against
Night-walking

By laws not to
oblige those
which are not
of their Body.

Butchers.

Strangers not
bound to take
notice of the
By-law.

Ancient Charters granted to the University of *Oxford*, a Jurisdiction *tam in Laicos quam in alios*, and a By-law was made 200 Years since against Night-walking, with a Penalty of 40 *s.* upon the Offender, and a Townsman was found at 9 Clock walking the Street. *Scroop* moved for a Prohibition. *Per Cur.* without an Act of Parliament, or express Prescription, a Corporation cannot make a By-law to bind those which are not of their Body. 2 *Ventr.* 33. *Dodwell's Case*.

The Corporation of Butchers in *London* was confirmed the 3 *Fac.* by which they had Power and Authority given them to make By-Laws and Ordinances, they did afterwards ordain, That no Butcher, or Person being a Stranger, should sell any Veal within the City of *London*, unless they did dress the Kidneys of their Veals, as the Kidneys of Sheep were dressed, and that if they did otherwise, to forfeit every time 6 *d.* and if they refused to pay it then to forfeit the Veal. *Per Cur.* A Stranger is not bound to take notice of a private Ordinance made by the Butchers in their Corporation, *aliter*
of

of an Act of Parliament. This By-law is not good to bind Stranger, but the same had been good if made to suppress Fraud, or any other general Inconvenience used by a Foreigner, as Corruption in the Sale of their Meat, and then they ought to take notice of the same. 1 *Bulstr.* 11, 12. *Francklin* and *Green*.

A By-law in *London*, that there shall be but 420 Carrs to be put to Hire in *London*, and if any more be used, the Owners shall pay 40 s. *Per Cur.* It's a good By-law; for tho they cannot restrain Trades, they may prevent the excreſcence of them, which will make a Nufance, as the multitude of Taverns and Ale-houſes; alſo they may reſtrain them as to the place of Trade; as that a Butcher ſhall not have a Shop in *Cheapside*, and a *Procedendo* awarded. *Sid.* 284. *Player* and *Fenkin*.

By-law to prevent the Excreſcence of Trades

Reſtraint as to the place of Trade.

The Custom of the City of *London* is, That the Mayor and Aldermen, and four Persons choſen out of each Ward by the Commonalty, may make Ordinances which they call Acts of Common-Council, and they ſhall bind every Citizen and Freeman, and all their Customs are confirmed by Act of Parliament. 3 *Leon.* 264.

Acts of Council in *London*.

C A P. XV.

Customs of the City of London.

They cannot try such Customs as directly concern their own Corporation by their own Certificate. Custom as to Queen-hyth. The nature of the Certificate by which they try a Custom. Hawkers. What Custom of London is tryable, per Pais. The Custom of taking Recognizances. The Courts are bound to take notice of the Customs of London. Contribution by Sureties. Citizens of London ought not to be impleaded in real Actions, but in their own Courts. Pleading. Lands in London pass by Bargain and Sale, without Inrollement. Custom of London as to stopping Lights by Building. The Custom of London as to Inn-keepers selling their Guests Horses. Custom of London as to Gutters. Unity of Possession. The Lord Mayor a Justice of Peace, cannot imprison without shewing Cause. President of Declaration for stopping Light, and the Custom of London pleaded. The Custom of London as to Prisage of Wines. Devise of Land in Mortmain. The Custom as to measuring of Coals, Stat. 3 Jac. c. 15. Of Relief of poor Debtors.

Regularly the Customs of London shall be certified by the Mouth of the Recorder.

Cannot try such Customs as directly concern their own Corporation by their own Certificate.

This Privilege of London is to be understood of such Customs as are of the nature of Local Laws, peculiar Laws for that City, general to all the Citizens, differing from the general Law of the Kingdom; as the Custom of foreign Attachment, and the Custom, that if a Debtor become Fugitive he may be arrested before the day of Payment. And

5 Rep. 82. If one Citizen be indebted to another in a single Contract it shall be equal to an Obligation. And as the Case of *Oxford* was 21 Edw. 346. it was pleaded, That the Custom of the Town was, that if a Man had possession of Lands by 40 Weeks, he could not be put out but by the King's Writ; whereupon the other would have taken Issue, no such Custom. But it was resolved that this being the Law of the City, was not to be tryed by Jury, but by the Judges as matter of Law; and the Reason is, The Judges of every Place are supposed to have knowledge of the Laws of the Place, whereby they do judge, and to have Customaries amongst them; and therefore in Suits in their own Courts do determine them, as the Judges of the Common Law do in the King's Court judge the general Customs of the whole Kingdom being the Common Law. And so in *London*, by special Privilege they certifie also their Customs of this nature into the *King's Bench*, which other Towns do not. But their Customs, even those which are their Local Laws, are tryable by Jury, if they come to issue in the King's Courts. Now *Day* and *Savage* his Case was,

In Trespass for taking away a Bag of Nutmegs. Defendant pleads, The City of *London* is an ancient City, &c. and that the Mayor, Citizens, and Commonalty had been, time out of Mind, a Body Corporate, and seized of a Bank or Wharf in *London*, called *Queen-bythe*, and had used to have and take for Goods laid upon the said Wharf, to be conveyed thence by Water, of Persons not lawfully thereof discharged, 1. for every Porters burden; and for default of Payment to distrain, by a Person to be appointed, and so shew the Matter, and that he was appointed Collector. Plaintiff replies, and confesseth all the Bar in general, and said, that within the said City there was, and time out of Mind had been a Custom, that all the Freemen had been,

Queen-byth.

and ought to be discharged, &c. and averred, that he was a Freeman of the said City: The Defendant said there was no such Custom within the said City, *Et hoc paratus est verificare ubi & quando & prout Curia consideraverit*; and then adds a surmise thus, *Super quo præd' Johannes Savage dicit quod in Civitate prædicta*, There is, and time out of Mind hath been a Custom, That when any Issue, &c. upon any Custom of the said City is joyned, tho the Mayor, Commonalty, and Citizens are Parties to the Action, the Mayor and Aldermen have used to certifie to the Justices the truth of such Custom, and prayed the King's Writ to the Mayor and Aldermen to certifie the truth of such Custom, &c. Plaintiff saith, That the said Issue ought to be tryed by Jury and not by Certificate.

Per Cur. The Custom is not to be tryed by Certificate. 1. This is rather a Prescription than a Custom, and a matter of Discharge. 2. Its no such Custom as is within the reason or meaning of that special form of Tryal *per Certificate*, because its not of the nature of Local Laws, *prout supra*. And this concerns the body Corporate of the City only, and the place *Queen-byth* only, and not for all the Citizens personally, as all the Customs in the nature of Laws are. 3. Its against natural Equity to allow them their Certificate, wherein they are to try and judge their own cause.

The nature of
the Certificate.

Note, The Certificate is no judicial Act but Ministerial, and if the Certificate be false, the Party shall have his Remedy by Action of the Case, and that not against the Recorder, but against the Mayor and Aldermen; for it is their Certificate by their Recorder, and so is the Pleading and Surmise; and the Writ to certifie is a Warrant to them which takes away ones Defence made against their Partiality to themselves, that they did not certifie, but their Recorder. *Hob.* 85, 86, 87. And *Smith and Hancock's Case* was so adjudged. Tres-

Trespafs was brought by *A.* against *B.* for taking of certain Goods; the Defendant pleads, that there is a Custom in *London*, time out of Memory, that if any bring Goods, *circa London* to sell, not having any Shop in any Place within the City which they call Hawking, that then he shall forfeit these Goods to the Mayor, Citizens, and Commonalty, and for that the Plaintiff brought these Goods, *circa* the City against the Custom they seized them. The Plaintiff replies there is not any such Custom; this Custom cannot be tryed by the Mayor and Aldermen, by the Mouth of their Recorder, but *per Pais* because they are part of the Commonalty of the City, and so are to have benefit of it, and they shall not be Judges in their own Cause. 2 *Rob. Abridg.* 581. But Hawkers are allowed by Licence *per Act* of Parliament.

Hawking.

What Custom tryable *per Pais*.

K. was bound to *H.* in a Recognizance of 200 *l.* before the Mayor and Aldermen of *London* in *interiori camera de Guild-hall London*, upon which Recognizance *H.* brought a *Scire Facias* before the said Mayor, &c. in *exteriori camera*, and there had Judgment to recover; upon which recovery he brought this Action in *C. B.* Defendant demurs on the Declaration, because he hath not alledged that the Mayor of *London* hath Authority by Prescription or Grant to take Recognizances; and if he hath not, then is the Recognizance taken *coram non Judice*, and so void. *Per Cur.* we well know that those of *London* have a Court of Record, and every Court of Record hath Authority incident to it to take Recognizances for all things which concern the Jurisdiction of the said Court, and which arise by reason of matters there depending. And in many cases the Courts of the King are bound to take notice of the Customs of *London*, and that they of *London* have a Court of Record: for if a *Quo Warranto* issueth to Justices in *Eyre*, it behoves not them

Of taking Recognizance.

Courts bound to take notice of the Customs of *London*.

of *London* to claim their Liberties, for all Courts of the King are to take notice of them. 1 *Leon.* 284. *Hollingshead* and *King*. And so is *Offley* and *Johnson's* Case, They were bound as Sureties with one *A.* to *B.* who recovered against *Johnson* in *London*, and had Execution against him; and now *Johnson* sued *Offley* to have of him Contribution to the said Execution, *ut uterque eorum oneretur pro rata* according to the Custom of *London*. *Offley* removed the Cause by Privilege into *B. R.* whereupon came *Johnson* and prayed a *Procedendo*; and because upon this matter no Action lieth by the course of the Common-Law, but only by Custom in such Cities, the Cause was remanded, otherwise the Plaintiff should be without Remedy. *Lib. Int.* 160. 2 *Leon.* 167.

Contribution.

Citizen ought not to be impleaded in real Actions, but in their own Courts.

In a Writ of Entry *sur* Disseisin, the Tenant said that the House in demand is within the City of *London*, and that the said City is *Antiqua Civitas*; and that King *H. 3.* *concessit civibus Civitat' prædict' quod non implacitentur de Terris & Tenementis suis extra muros civitatis prædict'*, and further saith, That he himself is *civis London*, &c. and demanded Judgment of the Writ. The Tenant pleaded *sed illis rectum teneatur intra civitatem prædict' secundum consuetud' civitatis prædict'*. Exception to the Plea was, That the Tenant shews not before whom, by the Custom they ought to be impleaded. *Per Cur.* the Tenant ought to have shewed, That the Citizens for their Lands ought to be impleaded in the *Hustings*, &c. 3 *Leon.* 148.

Pleading.

Lands passed by Bargain and Sale, without Enrolment.

By an Exception at the end of the Statute 27 *H. 8.* of Bargain and Sale, Lands may pass at this day in *London* by Bargain and Sale by Word, without Deed, for it is out of the Statute.

Mountague Sergeant and Recorder of *London*, certified the Custom to be, That if one bring an Horse to an Inn, and leaves him there, and goes his

his way, and the Horse eats up more than his Price, by the Custom of *London* the Innkeeper may sell this Horse to pay himself (but not if the Debt were for other Horses.) And if one do bring many Horses into an Inn, and afterwards takes all of them away but one, the Innkeeper cannot sell this one Horse for payment of that which was due to him for the other Horses, by the Custom of *London*, notwithstanding that the Debt did amount to more than the price of this Horse; but every Horse by the Custom is to satisfy the Debt due for his own Meat only. 1 *Bulstr.* 207. *Mossé and Townsend.*

The Custom of *London* as to Innkeepers selling the Guests Horse.

The Custom of the City of *London* is, That where an ancient House hath been, that there upon this old Foundation by the Custom he may build and stop the adjoining Lights of another, and justify it in Plea. But because the Defendant did not set forth in his Plea, that he did erect this his new Building upon the old Foundation as he ought to have done, Judgment was given for the Plaintiff. 1 *Bulstr.* 115. *Hughes and Keymish.*

Custom of *London* as to stopping Light by Building.

Pleading.

But the Custom of a City, which enables Men to build upon a void piece of Land, where there was not any House before, by this to stop the Lights of his Neighbour is altogether void, and so it was adjudged in *Mosely and Blands Case*, cited in *Alldrid's Case*, such a Custom being alledged in the City or *York*.

The Plaintiff declares of stopping three Lights, by building in the Yard of the Defendant, &c. The Defendant justifies the total stopping of two Lights, by reason of a Custom of *London*, &c. and of the stopping of the third Light in part, and this by the Custom of *London* also, and concludes *absq; hoc*, that he is guilty *aliter vel alio modo*. Plaintiff demurs, 1. Because the justification in part of one of the three Lights is uncertain; for the Court cannot know in what part of the Light, *viz.* Eastward

Of stopping Lights.

Pleading.

or Westward, and without the Defendants shewing,
 2. Because the Declaration of the Plaintiff is not answered as to the third Light ; for the Plaintiff had supposed *totum Lumen & Aer* to be stopt in three several Lights ; and the Defendant answers not to the stopping the third Light, but in part, and so for the other he confesses himself Guilty, and his Traverse is idle. For if he does not justify all he is guilty in all ; as this case is he ought to have pleaded *non cal'* to part, and shewed what part, and made it certain by Bounds, and have justified for the residue ; and so Judgment *pro Quer. Rol. 225. Newhall and Bernard.*

Gutters.

Unity of Possession.

If the Custom of *London* be where two Tenants are adjoining, and the one had a Gutter current by the Tenement of the other, which he may not stop, Unity of Possession shall not extinguish this Custom, but it shall be revived after they are severed. For the Custom of *London* extends to all Gutters which are in the Lands of another, and so the Custom is revived. 1 *Rol. Abridg.* 936. *Jordan and Atwood.*

Lord Mayor a Justice of Peace.

W. brings an Action of Faux Imprisonment. Defendants justifies that *London* is an ancient City, and that the Mayor of *London* is a Justice of Peace, and that the Defendants were Sergeants of the Mace, according to the Custom of the City, and that the Lord Mayor, viz. one *L.* commanded them to arrest the Plaintiff for causes to them unknown, but to him known, and to imprison him. It's no good Justification, because they only shewed that they were Sergeants at Mace, duly Elected, according to the Custom of the said City, but do not shew the Custom and Authority that they have to make Sergants, and to arrest ; and here it is shewed that the Mayor is a Justice of Peace, and it doth not appear whether he did as Justice of Peace, or Mayor ; and a Justice of Peace cannot command his

his Servant to arrest one in his Absence without writing. And the Plea is, That the Mayor commanded them to imprison him presently without shewing any Cause. For the Judges cannot imprison without shewing Cause; but they and the Mayor both may command an Officer to arrest a Man without shewing Cause; or else he may frame reasons before he is examined. 1 *Brownl.* 204, 205. *Woodyer's Case. Vide le Case Cro. Jac.* 81. It is not shewed whether the Mayor was a Justice of Peace by Prescription or Charter. But the principal was, he ought to have shewed the Cause of the Imprisonment, so as the Court may adjudge whether it is lawful or not.

But may command an Officer to arrest without Cause.

London ff. **J**eremias Green queritur de Jacobo March in custodi March' &c. p eo videt quod cu pdice Jci ante & sup septimum diem Novembris Anno Regni Dom Car Secundi nunc Regis Angl &c. decimo septimo & abinde hucusq possessionar exiss' de quodam antiquo Messuagio cum ptin scituar' & existene in Parochia Sancti Benneti Gracechurch in Warda Pontis London p termino diversoz' Annoz' adtunc & adhuc ventur Cumq; etiam pdice Jacobus pdi septimo die Novembris Anno supradict' & abinde hujusq; possessionar fuit & adhuc possessionatus exissit de uno alio Messuagio cu ptinentiis scituar' jacent & existente in Parochia Sancti Leonardi Eastcheape in Warda pdice pr' adjungend pdice antiquo Messuagio pdice Jeremie cumq; pdice Messuag pdice Jacobi a tempore consecrationis & edificationis inde usq; pdice septimum diem Novembris Anno supradict' sic edificat fuit & a toto tempore cujus contrarii memoria hominum non exissit continuabit & tale fuit & in tali

tali modo usq; p̄dice septimum diem Novembris anno supradicto Ita quod p̄dice Messuag' p̄dice Jacobi non impediebat clarum lumen ab intrando in culinam parcel p̄dicti antiqui Messuagii p̄d' Jeremie cumq; p̄dice septimo die Novembris anno supradicto apud London p̄dice in p̄dice Parochia Sancti Benneti Gracechurch in Warda p̄dice & a toto tempore cujus contrarii memoria hominum non existit quedam fuit antiqua fenestra in culina p̄dice p̄ quam antiquam fenestram clarum lumen p̄dice a toto tempore supradicto usq; p̄dice septimum diem Novembris anno supradice in Culinam p̄dice intrare consuevit & solebat & culina illa illuminabat p̄ quod lumen p̄dice Jeremie & omnes al' person' que p̄reantea fuerunt Inhabitantes & Possessiones p̄dice antiqui Messuagii p̄dice Jeremie habuerunt & habere consueverunt magnū beneficiū & advancementum p̄ salute comodo & convenientia p̄d' Jeremie & semetipsoz' & ejus & eorum familie & familiarium & semp abinde hactenus habere debuerunt p̄dice tamen Jacobus p̄missor' non ignarus sed machinans & maliciose intendens ipsum Jeremiam de cassamentis & comoditatibus fenestre & luminis p̄dice deprivare & culinam ill' cu magna & horrida tenebrositate & obstruere & obscurare ipse idem Jacobus p̄dice septimo die Novembris anno supradicto Messuag' p̄dice p̄r' adjungend' p̄dice antiquo Messuag' p̄dice Jeremie apud London p̄dice in p̄dice Parochia Sancti Leonardi Eastcheape in Warda p̄dicta divulgavit & quoddam novum edificium adtunc & ibidem erexit in tantum magis quam antea augmentabit p̄pe culinam p̄d' quod ratione inde p̄dice Jacobus tunc & ibidem

ibidem inde magna parte depravabit & impedibit p̄dice Jer' de lumine illo quod ante p̄dice septimum diem Novembzis anno supradicto p totū tempus supradice in culinam illam intrabit & culinam illam illuminabit & illuminare solebat in & p fenestram p̄dice ac culinam illam ratione p̄dice nobi edificii cum magna & horrida tenebrositate tunc & ibidem obscurabit & obstruxit Ac ratione inde p̄dice Jeremias a p̄dice septimo die Novembzis anno supradicto usq; primum diem Maii tunc pr' sequentem usq; beneficid p̄ficiū & Comoditatem culine & luminis p̄dice in magna parte p̄didit & amisit unde idem Jeremias dicit quod ipse deterioratus est & dampnum habet &c.

Actio non quia dicit quod quidam Jacob⁹ Barrett Miles & Baronett⁹ ante scilicet primū die Maii anno Regni dec⁹ D⁹ Regis nunc decimo quinto fuit scilicet de Messuagio primo adjungente Messuag' p̄dice Jeremie Et sic inde scilicet existend p quosdā articulos sigillo ipsius Jacobi sigillat & hic in Cur plac factos apud London p̄dice in Parochia & Warda p̄dice decimo die Aprilis anno Domini millesimo sexcentimo sexagesimo quinto aggregatum fuit in p̄dice Jacobū Barrett & p̄dice Jacob' March modo & forma sequene videlicet quod Jacobus Barrett aggregasset facere plac Jacobo March Executorib⁹ Administratoz⁹ & Assignat⁹ suis bonam & sufficiens Dimissionem (Anglice Lease) de tribus Messuagiis scilicet in Gracechurch-street cum p̄tinentiis nup in occupatōe cujusdam Martini & Nichol Roberts p termino quadragine & unius annoz habend a Festo Sancti Johannis Baptiste tunc primo sequente p & sub annuali redditū centū & decem librarum legalis

legalis mones Anglie solvend Quarteriatim
 prima solutione incipiend sup festum diem
 Sancti Michaelis Archi Anno Dni millimo
 sexcentesimo sexagesimo sexto Et sup hanc
 ulteriozem Consider quod pd' Jacob' March
 Executor Administrator' vel Assignati sui
 infra octodecim menses pr' sequen' erogaret
 & exponeret summa quingene librar' in nova
 edificatione messuagior' pdict' ac quod dimen-
 siones (Anglice the Scantlings of Fir) p tanto
 tenementor' pd' quane ipse idem J. March
 de novo Edificae approbati p duas psonas
 quas ipse pd' Jacobus Barrett & pd' Ja-
 cobus March elegerunt ad ppositum illud
 Quodq in psecutione (Anglice pursuance and
 performance) articulo 4 pd' Jacobus Barrett
 p Indentur inter pd' Jacobum Barrett &
 pfae Jacobum March ipse pfae Jacobus
 Barret dimisit pd' messuag' (inter alia) ppe
 messuagio pfae Jeremie adjungen' pfae
 Jac' March a festo Sancti Johannis Ba-
 ptiste tunc pr' sequen' ante dae Indentur
 illius durante termino quadragine & unius
 annoz' virtute cujus quidem dimissionis pd'
 Jacobus March in messuag' pd' intrabit
 & fuit inde possessionatus Quod quidem
 messuag' tempore quo, &c. fuit antiquum
 messuag' p'ind & contigue adjungend pd'
 messuagio pd' Hec in narracone pd' supius
 mencionat Quodq pd' fenestra in culina pd'
 messuagii pd' Jeremie in Narracone pd'
 mencionae fuit conting' adjacend & aspiciend
 ad ulus pd' messuag' pd' Jac' March pd' sepe
 die Nobembris Anno decimo septimo supra-
 dicto fuit verist' in decalu valde indigen'
 & necesse re-edificari & construi in illa parte
 sic adjacend & adjungen' pd' messuag' pd' J.
 idemq Jac' ulterius dicit quod Civitas
 London

London est a tempore cujus contrarii memoria hominū non existit fuit antiqua Civitas Quodq; in eadem Civitate habebatur talis laudabilis & antiqua Consuetudo usitata & approbata videlicet quod si quis habuit messuag' vel domū in p'd Civitate London ppe vel contigue adjacent vel adjuget alteri messuagio vicini sui ibidem Et fenestre vel luminar' talis messuagii vel domi sunt aspiciend' usus alteri messuagium vicini sui sic adjacent vel adjuget licet hujusmodi messuag' & domū ac luminar' & fenestre inde fuerunt antique tamen hujusmodi vicinus p'prietar' p'dict' alterius messuagii sic adjacent vel adjuget p & juxta consuetudinem Civitatis p'd in eadem Civitate p totū tempus p'd usitae & approbatae bene & licite potest potuit & consuevit ad libitum suum p'dict' alterum messuagiū suū sic adjacent vel adjuget de novo sup antiquam foundationē (Anglice the ancient Foundation) in tanta altitudine edificare quā p'p' domus p'd sic de novo construend' placuit sursū ad usus & ex opposito p'dict' luminar' & fenestr' vicini sui adjuget & luminar' & fenestr' obscurare nisi sit vel fuit aliquod special' scriptum Chirograph' vel Record' Convent' vel restricta in contrariū in ea parte p'dict' J. postea scilicet eod' septimo die Novembris Anno decimo septimo supradict' apud London p'd in Parochia & Warda p'd p & juxta consuetudinem p'dict' p'dict' messuag' in possessione sua ut p'fertur existend' p'dict' messuag' p'dict' J'er adjuget dirupit (Anglice did take down) ac sup antiquā foundationem ppe culinā p'dict' J'er in narratione p'dict' mentionatam super quam p'dict' messuagium p'dict' J'at p antea steteret ibidem in ea parte adjacent & adjuget p'dict'

pdict messuagio pd Jer & pdice fenestr in
culina pdict inde aduersus & ex opposito in
novum messuagium & domum ibidem edifica-
vit & pinde fenestr pdice in culina pdice

Special scripto Chirographo vel Ac-
cordo conventionē vel restrictionē in contra-
rium inde in ea parte tunc vel unquam ante
hac existente per totum tempus in narra-
tione pdice mentionae ratione inde structure
pdict obscuravit & obscuravit put ei bene
licuit Et hoc paratus est verificare unde pe-
tit iudicium si pdice Jer actōem suam pdice
inde versus eum habere seu manutenere de-
beat, &c.

Prisage of Wines.

Prisage

King Edward 3. Granted to the Mayor and
Commonalty of *London*, that no Prisage
thall be taken of any of the Wines of the Citizens
of *London*. *G. H.* being a Citizen and Freeman of
London, and resident within the City, had four Ships
laden within Wine Imported; two of them came
up the *Thames* at *London*, and before Unbulking of
them *G. H.* makes *Francis* his Wife Executrix, and
dies: afterwards the other two Ships came up to
London, the King's Chief Butler demands Prisage
for the Wines, of the said four Ships, (*viz.*) to have
of every the said Ships one Tun before the Mast,
and one Tun behind the Master: And by the great-
est part of the Judges no Prisage ought to be paid
for any of the said Ships. 1. Such privilege as *G.*
H. was to enjoy had he been living, the same *Fran-*
cis his Executor, his Representative shall have. And
2. It is for the support of Trade. But Prisage is
not due till the bulk of the Ship be broken, and
the

the Ship unladen. But a Citizen and Freeman of *London* that dwells in *Bristol*, &c. shall not have this Privilege ; and he must be a Citizen and an Householder too ; and it extends not to a publick and joynt stock of Wines of the Mayor and Commonalty ; neither shall it extend to a Citizen and a foreigner joynt Merchants. A Citizen who hath a Shop in *London*, but inhabiteth elsewhere shall pay Prifage. 1 *Rol. Rep.* 148.

A Citizen and Freeman of *London* may devise in Mortmain for Lands in *London*, to a Corporation : but he that is within this Custom ought to be subject to Scott and Lott. 1 *Rol. Rep.* 141, 142.

Per the Custom of *London* no Attaint lies for a Faux Verdict given in *London*. 7 *H. 6.* 32. b.

It is a good Custom of *London*, that the Mayor of *London* may take Recognizances of any Persons being of full Age, or Women not married ; he is Judge of Record, altho the Debt peradventure be due out of *London*. *Chamberlain and Thorp.*

It is a good Custom of *London*, that they have always used to have measurage of Sea-Coals *infra* Portum Lond. which extends from *Staines-bridge* to *London bridge*, and from thence to *Graves-end*, and from thence to *Yendale*, and all this is the Port of *London*.

Trespas of Assault, Battery, and Imprisonment, *apud Parock' Sanct' Nicholai Basingstreet.* Defendant justifies by reason of a special Act of Parliament for the relief of poor of Debtors, 3 *Fac. c.* 15. That every poor Citizen and Freeman, Inhabitants in *London*, being sued for Debt under 40 s. may exhibit his Suit in the Court of Requests in *London*, who shall nominate Commissioners to the number of 12, and that any 3 of that Commission may send for any Creditor who is complained of in suing for such a Debt under 40 s. and if he refuse to come, and perform not their Orders, they may

cause

Pleading.

cause him to be arrested by any Sergeant of *London*, and commit him to Prison, there to remain until he perform the said Order; and the Defendant saith, That by reason of the command of such Commissioners, at such a Parish in *Woodstreet*, because he refused to come before them he was committed to the Compter in *Woodstreet*, & *hoc paratus est*, &c. on Demur. 1 Exception to the Plea, because he doth not shew that the Debtor, who complained was poor, and a Citizen and Freeman inhabiting in *London*, otherwise the Act doth not give them Authority to meddle. 2. Because the Battery and Imprisonment so meant is alledged in *Parochia Sancti Nicholai*, and he justifies in another Parish, and doth not traverse the Battery and Imprisonment alledged in the Declaration. *Cro. Car. 572. Owen and Long.*

Prisage.

Fraud to deceive the King of Prisage.

UPON English Bill in the *Exchequer*, the Defendant in several Vessels laden at the same time at *Amsterdam*, imported into the same Port here in Parcels, several Ships of the Burden of 30 or 28 Tuns only 9 Tuns and 3 Hogsheads were imported in each Vessel, and not the Quantity of 10 Tuns to defraud the King of Prisage. *Per Cur.* It's Fraud, and shall be so presumed, being imported from the same Place, to the same Place, and at the same time in several Vessels, and consigned to the same Merchant, and belonging to the same Owner, unless there be some proofs to the contrary to disprove these presumptions, as that one Vessel was not sufficient to import all, or was almost Laden before, and the like. *Hardr. 218. Sir Will. Waller, versus Topham & alios.*

Sir

Sir William Waller, as Farmer of the Prifage and Butlerage of Wines within the Kingdom of England, exhibited an Information against Giles Traverfe, for that the Defendant being a Merchant, did *tali die & An.* import an hundred Butts of Spanifh Wine into *Bristol*, and other out-ports, of which Prifage (*viz.*) 2 Tuns were demanded, and not paid. Defendant pleads, That at the time of the Importation of the faid Wines, and long before, he was, and ftill is a Citizen of *London*; and that by a Charter granted to the City of *London* by *Ed. 1.* no Prifage is to be taken of the Wines of the Citizens of *London*, but are exempted, the words of the Charter run thus, *Et quod de vinis ipforum civium nulla prifa fiat per aliquem miniftrum noftrum vel heredum noftrorum feu alterius contra eorum voluntatem (viz.) de uno dolio ante malum & alio dolio retro malum nec aliquo alio modo, fed inde perpetuo fint quieti.* Q. Whether Citizens Wines fhall pay Prifage, when Imported into Ports out of the City. *Per Cur. Scaccarii* they fhall; becaufe it is an antient Parcel of the King's Revenues, and in the King's Grant indefinite words do not import an abfolute Univerfality, and the City of *London*, which hath a Port of its own of a large Extent, and therefore tho no neceffity of fuch Conftitution, as to difcharge them elfewhere. *Hardr. 312.*

C A P. XVI.

Of Foreign Attachment in London.

The Manner how it may be made, and the Proceedings in it, and what things are Attachable or not. The Garnishee who, and what he is to do. Of Bail on Attachment. Of Pleading by the Garnishee. The Money or Goods of a Prisoner in the King's Bench or Fleet how to be Attached. How Attachment may be avoided. Foreign Attachment in Exeter and Pleading. Whether a Debt owing to a Corporation be within the Custom of Foreign Attachment. What Debts or Goods may be Attached by the Custom. Of Horse in Inn-Keepers Hands. Rent. Foreign Attachment on Action on the Case. Goods not Attachable in the Hands of a Trespassor. Debt in a Superior Court not to be Attached. Of Attachment of a Debt before it is due. Money due on Account or Bond after Promise to pay it, and the Day of Payment past may be Attached. What Money not Attachable, as a Debt due to the Testator Tempore Mortis suæ. Damages not Attachable. In what Case the Attachment must be entred against the Lord Bishop of London. How Attachment is dissolved. The Manner for the Defendant in Attachment to disprove or avoid any Debt. Foreign Plea. Surmise that the Stranger who is indebted to the Defendant is within the Jurisdiction. Custom of London as to sequestering an House.

EVERY

EVERY Attachment is made upon a Plaintiff How made. in Debt in this manner: *A. owes B. 100 l. and C. is indebted to A. 100 l. B. enters an Action against A. of 200 l. and by virtue of that Action a Serjeant Attacheth 100 l. in the Hands of C. as the Money of A. to the use of B. which is returned upon that Action.* The Return must be within certain Hours, for that another Attachment haply may be made after in the Hands of C. so that C. hath no other way to avoid that other Attachment made in his Hands but by pleading the former Attachment made as before.

The Attachment being thus made, let the Plaintiff immediately or before the next Court holden for the same Counter fee an Attorney.

Four Court Days must first pass before the Plaintiff can cause the Garnishee, which is C. the Person in whose hand the Money was attached, to shew cause why B. should not condemn the 100 l. attached in the Hands of C. as the Monies of A. the Defendant on the Action tho not in the Attachment (for A. hath no Day in Court) to the use of B. the Plaintiff; then the Garnishee C. may appear in Court by his Attorney, wage Law or plead that he hath no Money in his Hands of the Defendants, or other special Matter.

If the Garnishee refuse to wage Law, the Plaintiff may try the Cause in four days following after the *Scire Facias* comes into Court, and may have Judgment; then the Plaintiff must put in Bail or Pledge, that if the Defendant shall come within the Year and Day, and the Day next ensuing into the Court, and that he can discharge himself of the said Money so condemned in Court, and that he owed nothing unto the Plaintiff at the time in the Plaintiff mentioned, the said Money shall be forth-coming.

An Attachment may be made for Goods and Money at the same Charge, (but the Sum must be certain) all upon one Attachment, and both in one *Scire Facias*.

An Attachment may be made in the Plaintiff's own Hands, either of Money, or Goods, or both.

The Plaintiff must observe that after Judgment is given by the Court for the appraisement of the Goods he must bring two Freemen of *London* into the Court the next Court-day following, there to be sworn That they have made an Appraisement of the Goods to the best of their Skill and Knowledge, and then put their Hands to the Appraisement.

An Attachment is never throughly perfected till there be Bail and Satisfaction on Record.

If Attachment be made of Money due upon a Bond the Penalty must be attached, for the Court afterwards will abridge it to the Principal.

The Garnishee (which is the Party in whose Hands the Money is attached) being warned in after the four Court-days are past, to appear to shew Cause why the Money or Goods condemned in his Hands should not be condemned in Court to the use of the Plaintiff, must go to an Attorney in Court and give him his Fee, then if he can wage his Law that he hath no Goods or Money in his Hands of the Party's against whom the Attachment is made, he may be discharged; but if he will plead, he must put in Bail or Pledges before the second Court-day after the *Scire Facias* comes in, otherwise for want of Bail he is condemned for the whole Sum. He may plead that he hath no Money or Goods in his Hands.

If *A.* be indebted to *B.* who is indebted to *C.* and *C.* sues *B.* in *London*, and by the Custom of *London* attacheth the Debt of *B.* in the Hands of *A.* and after *B.* brought Action against *C.* for his Debt, and pleads the Attachment. *B.* may tra-
verse

verse the Cause, *i. e.* That he was not indebted to C. For if there were not any just Debt against the Plaintiff in the first Action the Attachment is not any bar. Cited in *Paramour's Case.* 3 *Rolls Rep.* 106.

The Garnishee after Trial may put in Bail in the Absence of the Party against whom the Attachment is made, before the Lord Mayor, and to dissolve the Attachment and all the Proceedings thereon; but then he and his Security are liable to what Debt the Plaintiff shall make appear to be due from the Defendant.

The Party against whom the Attachment is made may put in Bail at the Compter, or submit his Body and thereby dissolve the Attachment, which he may do at any time before Satisfaction acknowledged upon Record by the Plaintiff.

If the Garnishee fail to appear by his Attorney, being warned in by the Officer, at the next Court, to shew Cause as is aforesaid, he is taken by default for want of appearing, and Judgment given against him for Goods and Money attached in his Hands; and he is remedyless either at the Common Law or in Equity, though he hath not one Penny in his Hands, and if taken in Execution must go to Prison or pay the Money.

If the Money attached in the Garnishee's Hands be upon a Bond or other Contract under Seal, where the Money is not due, he may put in his Plea, and set forth that the Day of Payment is not yet come.

If the Garnishee hath a Bill of Sale of the Goods, he may plead it in Court and so acquit himself.

If Attachment be of an Horse in Inn-Keepers Hands, he may plead that there is so much for Horse meat due, &c.

Of Horses in Inn-Keepers Hands.

No Attachment lies of Rent.

Rent.

The Money or
Goods of a Pri-
soner attached.

If the Money or Goods of a Prisoner either in the *King's Bench* or *Fleet* be attached in the Sheriffs Court, the Prisoner may come from that Prison and submit his Body to Prison to the Action, and so dissolve the Attachment; and bring his *Habeas Corpus* and be turned over to the said Prison again.

How Attach-
ment may be
avoided.

An Attachment may be avoided by filing an Original against the Party upon Attachment, so that it be filed before the Date of the Plaint.

After Satisfaction upon Record, and when the Money is fully condemned by the Plaintiff, the Party against whom the Action is, and whose Goods are attached may come and put in Bail *ad disprobandum debitum*, then he must put into Court his *Scire Facias*, but it must be within the Year and Day next ensuing after Satisfaction. Then the Plaintiff must declare. If the Defendant can justify or discharge himself, then the Defendant shall have restitution of all the Goods and Money.

Foreign At-
tachment in
Exeter.

M. did affirm a Plaint in the Court of the City of *Exon* against *Hore*, and upon *Nihil* returned, it was surmised that one *Trosse* had certain Monies in his Hands due to *Hore*, and according to the Custom of *Exon* the said Money was attached in the Hands of *Trosse*; who appeared upon the Attachment, and pleaded that he owed nothing to *Hore*. And hereupon it was demurred, and Judgment given against *Trosse*; because *Trosse* ought to have pleaded not only that he owed him nothing, but further that he had not any Goods of *Hore's* in his Hands. Upon Error *per Cur.* the Plea is good enough: For if there be not a Debt it is not attachable upon such Attachment; and the Pleading in *London* is altogether so.

Pleading.

Another Error assigned was, for that *M.* had recovered Costs against *Trosse*, which ought not to be; and also Judgment is not given that *Trosse* should not be discharged against *Hore*, and the Judgment

Judgment in *Exon* was reversed. 1 *Leon* 321. *Mitchel* and *Hore*.

The Plaintiff brought Debt in *London* against the *Hamborough* Company, who not appearing upon Summons and *Nihil* returned against them, Attachment was granted to attach Debts owing to the Company in the Hands of fourteen several Persons. By *Certiorari* the Cause was removed in *B. C.* but a *Procedendo* was granted. *Cur.* we will not take upon us to determine whether a Debt owing to a Corporation be within the Custom of Foreign Attachment or not. We agree that it is not unreasonable that a Corporations Debts should be paid. Let them proceed according to their Custom. 1 *Mod.* 212.

Whether a Debt owing to a Corporation be within the Custom of Foreign Attachment.

It is no Plea to plead in Bar of an Action a Judgment in Foreign Attachment without pleading Execution.

A Man indebted in Arrears on *Infinimul Compnasset* in a Sum certain promisseth to pay it at a Day certain, which passeth without Payment; and after this was attached in *London* by the Custom. Now in a new Action in *B. R.* for the Arrears it was adjudged a good bar. *Wandscote* and *Humfreys* cited 1 *Rols Rep.* 105.

What Debts or Goods may be attached by the Custom.

A Legacy may not be attached in the Hands of the Executor by Custom of Foreign Attachment; for it is uncertain whether the Executor pay this after the Debts paid. 14 *Jac.* 1. *Page* and *Lawketon's Case*.

If *A.* lend *B.* 100 *l.* to be repaid by *B.* upon the Death of his Father; and after the Death of the Father of *B.* this 100 *l.* is attached by force of Foreign Attachment pleaded to Action on the Foreign Case.

Foreign Attachment ; and after *A.* brought his Action on the Case against *B.* for the Money : This Foreign Attachment will be a good Bar ; for though the Custom be to attach Debts, and this is an Action on the Case in which Damages are only to be given ; for that this is a Debt and he may have an Action of Debt for it, and inasmuch as it was well attached, he shall not defeat it by bringing Action on the Case. 1 *Rols Abr.* 552. *Sir Nicholas Haly and Walker.*

Goods not attachable in the Hands of a Trespassor.

If *A.* be indebted to *B.* and *J. S.* a Stranger tortiously takes certain Goods of *A.* as a Trespassor, *B.* may not attach these Goods in the Hands of *J. S.* for the Debt of *A.* for that the Property is out of *A.* at the time, and only a Right in him.

If *A.* be indebted to *B.* by Bond, and *B.* is indebted by contract to *H.* *B.* dies, his Administrator demands the Debt on Bond of *A.* who promisseth that if he will forbear for a Month that then he will pay him, but does not pay it ; and after *H.* brings Debt in *London* against the Administrator upon the Contract (as he may by the Custom there) the due Debt of *A.* due on the Bond may be attached in the Hands of the Administrator ; for notwithstanding the Promise broken, yet the Debt continues due by the Bond. *Spinal and Tenant.*

Debt in a Superior Court may not be attached.

If a Man recover Debt or Damages in *B. R.* this Debt may not after be attached in *London* ; for an Inferior Court may not attach a Debt in a Superior Court. So after Imparlance to an Action of Debt in *B. R.* the Debt may not be attached in *London* for the Cause aforesaid.

So if a Writ of Debt returnable in *Banco* be purchased before the Attachment, this cannot be attached by the Custom. *Aliter* if it be by covin or antedate.

An Obligee before the Debt be due by the Bond may not attach a Debt for this by the Custom of *London*, because he cannot affirm a Plaintiff for the first Debt before it be due. But it's often said a Debt may be attached before it becomes due, by the Custom; but the Judgment is not that the Debt shall be presently paid, &c. But *per Cur.* Judgment may not be given upon this Attachment that he shall retain this in Satisfaction of his Debt demanded before due; for then execution should be of this Debt attached before it is due, which cannot be: For by the Judgment this is put in Execution presently.

1 *Rols Abr.* 553. *Pierse and Calcott.*

Administrator brought Action on the Case against *T.* The Case was, *T.* was indebted by Bond to the Testator, and the Testator was indebted by Contract to *Heydon*. After the Death of the Testator the Administrator demands the Debt of *T.* who promiseth if he will forbear him for a Month, but does not pay it. And after *Heydon* brought Action of Debt against the Administrator on the Contract in *London*; where by the Custom of Foreign Attachment the due debt of *T.* was Attached in his Hands. And now the Administrator brought Action on the Case upon the Promise for Nonpayment of the Debt at the end of Six Months, and the Defendant pleads all this Matter, and the Plaintiff demurs. *Per Cur.* 1. The Administrator shall be within this Custom. 2. This Debt may be attached as the Court inclined; for it was a certain Debt before the Promise made, for the Promise is to pay the Debt due upon Obligation: But had the Debt commenced by the Promise, *aliter*. If the Debt of the Administrator be traversable here, as it is agreed, then it appears the Administrator was not fully charged in Debt by *Heydon* on the Contract, for no Action of Debt lies against an Administrator on contract; but it was agreed it doth lye by the Custom

Of Attachment
of a Debt be-
fore it's due.

Money due on
Attachment or
Bond against
Promise to pay
it, and the
day of Pay-
ment past may
be attached.

The Law of Corporations.

Custom of *London*. 1 *Rol. Rep.* 105. *Spinal and Tenant*, upon general *Assumpsit* to pay at a day, it may be attached after the day past.

Condition of a Bond was to perform an Award, and sets forth, that there were divers accounts, &c. between J. S. Testator of the Plaintiff and the Defendant, and they submitted, &c. that he awarded that the Plaintiff should deliver certain Goods of which the Testator died possess'd, to the Defendant, and that the Defendant should pay to the Plaintiff 320 *l.* and then sets forth the Custom of forrein Attachments in *London*, that if a Suit were commenced against the Executor of any Person, any Debt which was due to the Testator *tempore mortis sue* might be attached, and then sets forth according to the common Form how this 320 *l.* was attached, and avers, there were no other Controversies between the Plaintiff and Defendant, but what concerned the Testator of the Plaintiff and him as Executor only. Plaintiff replies, The Defendant had not paid the 320 *l.* according to the Award, the Defendant demurs.

What Mony
not attachable,
as Debt due to
the Testator
*tempore mortis
sue.*

The Question was, Whether this Mony were attachable as a Debt due to the Testator, *tempore mortis sue*.

Per Cur. This is not attachable for the Testator's Debts, for the Administrator *de bonis non* might sue (if it were after) which it is not. It appears not that there was any Debt due to the Testator, Covenants there may be.

But where an Account is made upon Debt by Simple Contract, or where Executors give time for payment of a Bond due to the Testator, this shall be attachable, *ut supra*.

Damage not
attachable.

Executor recovers in Trespass for taking away the Testators Goods, the Damages shall be Assets, yet they are not attachable; so Damages recovered upon Covenants made to the Testator, if this Mony should

should be attachable the Executor might be lyable to a *Devastavit*, and yet should have no Remedy for the Sum awarded; and this was no Debt due to the Testator at the time of his Death. Where Executor takes Bond for a Debt due to the Testator, or where he sells the Testators Goods, the Mony for which they are sold cannot be attached, 1 *Ventr.*

111. *Hersam and Turgell.*

After satisfaction upon Record and where the Mony is fully condemned by the Plaintiff, the Party against whom the Action is, and whose Goods are attached, may put in Bail *ad disprobandum debitum*, ut supra.

If a Man die Intestate an Attachment may be made of Mony or Goods in a third Persons hands, but then the Attachment must be entred against the Lord Bishop of *London*, reciting his name. But when there is a Will proved or Administration granted, the Attachment dies, and it must be made against such Executor or Administrator, unless it be fully condemned in the Interim.

Where the Attachment must be entred against the Lord Bishop of *London*.

Note, That when a Defendant hath put in Bail upon the Attachment, and so dissolved it, he may have a note from the Clark directed to the Garnishees in whose Hands the Mony or Goods were attached, certifying him that the Attachment made in his hands is dissolved by the Defendants putting in Bail, so that then he may safely deliver the Goods or pay the Mony to the Defendant.

Attachment dissolved.

In all Attachments the Persons in whose hands Monies or Goods be attached is called the Defendant in the Attachment, and the Persons in whose Hands the Attachment is made is called the Garnishee; and if the Plaintiff in the Attachment shall obtain a Verdict and Judgment for the Goods and Monies attached in the Garnishees hands, yet the Defendant in the Attachment may at any time before Satisfaction acknowledged on Record, put in Bail to the Plaintiff's

Plaintiff's satisfaction upon which the Attachment is grounded, and thereby discharge the Judgment and all the Proceedings against the Garnishee; and tho the Garnishee be taken in Execution upon any such Judgment, yet if Bail be put in by the Defendant in manner aforesaid, before the Mony shall be paid the Garnishee will be immediately discharged. *Lex Lond.* 34, 35.

Note, That upon Attachment no Costs are allowed to either Party, let the Verdict be for or against the Plaintiff. *Lex Lond.* 34.

Disproof.

The Plaintiff shall not give Evidence of any Mony that came to the Garnishees hand, after the time of the Plea.

The manner for a Defendant in an Attachment to disprove or avoid any Debt demanded is as followeth. The Defendant must either render his Body to Prison, or give security to pay the Debt demanded, and then they may bring a *Scire Facias*, which is called a *Scire Facias ad disproband. debitum*, and the Plaintiff in this Attachment must be summoned to appear, and plead thereto; and after the Plaintiff hath pleaded, if the Debt demanded be not a Debt due by Bond, Bill, or Specialty, under Hand and Seal the Defendant may wage his Law, and thereby discharge himself of the Mony due by the Plaintiff: and if the Defendant be a Freeman of *London*, he must have six Compurgators, who will swear they believe in their Consciences, that what the Defendant swears is true; but if the Defendant be not a Freeman of *London*, then 2 Compurgators will be sufficient. If the Defendant shall not think fit to wage his Law, but will put the Plaintiff to prove his Debt, in such case he must plead he owes the Plaintiff nothing. And in case the Plaintiff fail to prove his Debt, a Verdict and Judgment will pass against him for Restitution of the Money, or Value of the Goods attached and
condem-

condemned. And if the Plaintiff in the Attachment shall in any such Case be taken in Execution, and shall be unable or unwilling to restore the Mony, his Security or Pledges that he gave when the Mony was condemned, will be compelled to pay the Mony ; for the Sureties cannot discharge themselves by rendring the Plaintiffs Body to Prison. *Lex Lond.* 41.

Pleading.

A Foreign Attachment in an Inferior Court was pleaded in this manner, that by Custom, time out of Mind, whoever levied a Plaint *pro aliquo debito* against another, upon Surmise that a Stranger was indebted to the Defendant, that Process issued forth to attach. It was objected, that it was not said *pro aliquo debito* which did arise *infra Jurisdictionem*. *Per Cur.* It need not be express'd that the Debt did arise *infra Jurisdictionem Curiae*, for perhaps it did not ; and that if Action be brought in such case, and the Debt be laid to be contracted *infra Jurisdictionem Curiae*, if the Defendant will plead to it he may ; but he shall never be admitted to assign for Error, that the Debt did arise *extra Jurisdictionem Curiae* ; but if he had tendered such a Plea, and they had refused it, then it had been Error. *1 Vent.* 236.

Forrein Pica.

Foreign Attachment may be pleaded to an Action on the Case. *Vide supra.*

In an Action of Debt for Tobacco in the *detinet*, a Debt may not be attached within this Custom in satisfaction ; for that it appears not of what Value this Tobacco was, by which it shall appear that the Debt is but a satisfaction to the Value, which cannot be supplied by a Plea in Bar in other Action against him in whose hands the Debt was attached.

1 Rol. Abridg. 553. *Pence and Calcer.* But if
the

the Value of the Tobacco had been averred in the Record of the Attachment, the Debt might have been attached in this Action.

Surmise that the Stranger to the Plaintiff is *infra jurisdictionem*.

Note. It must be surmised (by the Custom) that some other is indebted to the Defendant in such a Sum, and to pray Process to attach the Sum in his Hands. This is not a good Custom without a Surmise, that the Stranger who is indebted to the Plaintiff, is within the Jurisdiction of the Court. 1 *Roll. Abridg.* 554.

By the Custom of Forreign Attachment in *London*, *H. A.* sues *B.* in *London*, &c. and *C.* is indebted to *B.* in the same Sum, and the said *C.* is condemned there to *A.* according to the Custom and Judgment given against him accordingly; yet if no Execution be sued against *C.* *A.* may resort to have Judgment and Execution against *B.* his principal Debtor, and *B.* may sue *C.* for his Debt, notwithstanding the Judgment unexecuted. *Dier* 72.

If the Defendant in Attachment after satisfaction acknowledged upon Record, shall bring Action against the Garnishee for the Money so attached, the Garnishee may in such case plead the general Issue, and give the Attachment in Evidence; but at the same time must prove the Debt to be a just Debt, for which the Money was condemned, and the Court above have always allowed it as good Evidence against the Plaintiff in the Action. *Lex London* 38.

Custom of London, as to Sequestering a House.

IF *R. D.* owes Money to *L. C.* and absconds, and happens to leave Goods in an House or Warehouse locked up, and no Person in the House or Warehouse, in such Case *L. C.* may Sequester the House or Warehouse, and the Goods and the Chattels therein contained, and in six days time may condemn

condemn the Goods. The manner of making a Sequestration is thus, *L. C.* must enter an Action of Debt against *R. D.* with one of the four Attornies in the Mayors Court, and then one of the Officers of this Court must go to the same House or Warehouse, and say these words, *I do sequester this Warehouse and the Goods and Chattels therein contained, as the proper Warehouse, Goods, and Chattels of R. D. to answer J. C. in a Plea of Debt upon demand of 100 l.* and then must put a Padlock upon the Door of the House, and set a Seal upon the Key-hole. After four Court days passed, which is usually in four days, the Officer will receive a Precept to open the Warehouse, and cause the Goods therein to be Inventoried and Appraised by any two Freemen, and the Appraisers must set their Names or Marks of the same Inventory, and come to the next Court, and there make Oath of their just and true Appraisement. *Lex Lond.* 38, 39. The same day that the Appraisers are sworn, the Plaintiff may have Judgment and Execution for the Goods, bringing two sufficient Sureties who will enter into a Recognizance, that if the Defendant *R. D.* shall come into Court within a Year and a Day, and disprove or avoid the Debt demanded by *L. C.* that then *L. C.* shall restore the Goods, or the Value thereof to *R. D.* or else that they will do it for him.

C A P. XVII.

Customs of London.

Other Customs of London, that none shall keep any Shop, or expose to sale, not being a Freeman. Forrein bought and forrein sold, forfeiture by Custom. Regularly no forfeiture of Goods by a Patent. Customs against common Right and Rule of Law allowable in some Cases. Creditor by the Custom may arrest the Debtor before day of Payment. To enter an House upon suspicion of Whoring. A Freeman not to employ a Forreiner upon pain of 5 l. per diem. Examination of the satisfaction of a Debt good by Custom. Executors charged upon simple Contract. The Custom as to arresting before entry of the Action.

THAT no Person whatsoever, not being Free of the City of *London*, shall by any colour, way, or means whatsoever, directly or indirectly, by himself, or any other, keep any Shop, or any other place whatsoever, inward or outward, for shew, or putting to sale any Wares or Merchandizes, by way of Retail, or use any Trade, Occupation, Mystery, or Handicraft, for Hire, Gain, or Sale within the City of *London*, is a good Custom, and such Constitution made according to the Custom, upon pain of Forfeiture of 5 l. is good also. Case of the City of *London* called *Wagoner's Case*. The said Penalties to be sued for in the name of the Chamberlain of the said City in *Guild-hall* of *London*, before the Lord Mayor and Aldermen of the said City.

That none shall keep any Shop, or expose to sale, not being a Freeman.

It was resolved that there is a diversity between such a Custom within a City, &c. and a Charter granted to a City to such Effect: for this is good by way of Custom, but not by Grant; and therefore no Corporation made within time of Memory may have such Privilege, unless it be by Act of Parliament.

Diversity between Customs and Charter.

So a Custom, that Goods foreign Bought and foreign Sold within a City shall be forfeited, is good. *Vid. Dier 279.*

Forrein bought and forrein sold forfeited by Custom.

King *Hen. 6.* granted to the Corporation of Dyers within *London*, power to search, &c. and if they found any Cloth dyed with Logwood, that the Cloth should be forfeited. *Per Cur.* By Patent no Forfeiture may be imposed on the Goods of a Subject.

No forfeiture of Goods by a Patent.

There are divers Customs of *London* which are against common Right, and the Rule of Common Law, and yet are allowed in other Books, and the rather, for that they have not only the force of a Custom, but are also supported by Act of Parliament.

Customs against common Right and rule of Law allowed.

They have a Custom concerning the Arrest and Imprisonment of the Body of a Man, as a Creditor may arrest the Debtor before the day of payment, to force him to find Surety. *5 Edw. 4. 30. 11 H. 6. 3. 2 H. 7. 15.*

Creditor may arrest the Debtor or before the day of payment.

They have a Custom to enter into the House of another, which is his Castle. And as to that, the Custom of *London* is, That when a Chaplain or Priest had a Whore in his House or Chamber, and some on this had ill Suspicion; he which had such Suspicion shall come to the Constable of the Ward, or Beadle, and with him may enter the House or Chamber of the Chaplain or Priest, and commit the Offender to Prison, *2 H. 4. 12. 2 H. 7. 15.*

To enter on suspicion of Whoring.

If any Man that is not a Freeman of *London* keep any Shop inward or outward, within the City or

S

Liberty,

Liberty, for the Sale of any Goods or Wares by Retail, he forfeits 5 *l.* for every Day, and Action of Debt lies against him for the same in the Mayors Court, in the name of the Chamberlain of *London* for the time being. *Lex Lond.* 7.

If a Freeman of *London* shall employ a Foreigner to work within the City or Liberties, he forfeits 5 *l. per diem*, and Action lies against him for the same. *Lex Lond.* 14.

By their Custom the Goods of a Man wherein he had absolute Property may be forfeited, as upon forrein Bought and forrein Sold.

Examination
of the satisfac-
tion of a Debt.

They have a Custom which alters the course of Justice, (*viz.*) where an Action is commenced before a Judge to remove this hanging the Plea before another, as 10 *H. 6.* 15. In Action of Debt upon Escape of a Man taken by *Capias* upon a Statute Merchant, at the Suit of the Plaintiff. The Defendant saith, that the Custom of *London* is, That where a Plaintiff is affirmed before the Sheriffs of *London*, that the Mayor may send for the Parties at the suggestion of the Plaintiff or Defendant; and if it be found upon Examination before the Mayor, that the Plaintiff is satisfied, he shall award that the Plaintiff shall be barred, and that the Plaintiff affirmed a Plaintiff of this matter, and was examined before the Mayor, and upon Examination it was found that part was paid, and that the Plaintiff had taken Bond for the rest. Therefore the Mayor awarded that he should be barred, and it was adjudged that the Custom was good; for this Examination was pleading to the Action. But *contra*, if they prescribe to examine this after Judgment.

One may be a Freeman of *London* three ways,

1. By Service, as he which serves his Apprenti-ship.
2. By Birth-right, as he which is Son of a Freeman of *London*.

3. By

3. By Redemption, that is, by Allowance of the Court of Mayor and Aldermen; for no Man by Charter may be made Free of the City of *London*.

Constitution may not be made upon pain of Imprisonment, or forfeiture of Goods, but ought to be a reasonable Pain, pecuniary or not at all.

If a Man and his Wife suffer a Recovery in a Writ of Right. Writ of Right, according to the Custom of *London*, this shall bind as a Fine at Common Law. 2 Rep. 57. b.

By the Custom of *London* Executors or Administrators shall be charged upon their simple Contracts. If Contract be made by one Citizen to another in *London*, to pay Meny to him, and he which ought to pay it dies intestate, the Administrator shall be bound to pay it, as well as if it had been by Bond. And tho the Plaintiff was a Stranger, who brought Debt upon Bond, yet this Custom was good to bind him. 5 Rep. 82, 83.

After Plaint entred by the Custom of *London*, the Defendant may be arrested, viz. after the Plaint entred in the Porters Book, and before the Entry of this in the Court before the Sheriff, the Defendant may be arrested by the Custom of *London*. 9 Rep. 62.

It is the Custom of *London* to find Syreties for a Legacy, or else to be imprisoned. 1 Rol. Rep. 316.

C A P. XVIII.

Custom of London as to Actions
and Pleas.

Forrein Plea, and they refuse it, what is to be done. Good Advice if it be doubtful, whether the Custom is good or nor, as for calling a Woman Whore. Executors and Administrators charged upon the Simple Contract of their Testator. Error of a Judgment before the Lord Mayor is reformed by Commissioners, except in case of Information. Customs as to being sued in real Actions. Heir sued on the Bond of his Ancestor. Lord Mayor the Coroner. No Capias lies against Bail by Recognizance. Custom to take Depositions in perpetuum rei memoriam, without Suit depending. The Bail not to be taken in Execution without a Scire Facias.

Prohibition was granted to the Court of the Compter in Woodstreet London, to an Action of Debt there commenced; for that the Defendant had pleaded before any Imparlance taken, that the cause of Action did arise at a place out of their Jurisdiction, and offers to have sworn his Plea, and they refused to accept it: upon such a refusal a Bill of Exception may be made, and Error assigned *N. B. 21.* and a Prohibition granted, *1 Vent. 180.*

In Action, if the Debt be laid to be contracted *infra Jurisdictionem Curie*, it need not be exprest that the Debt did arise *infra Jurisdic^t* for perhaps it did not; yet if Action be brought in such case, and the Debt be laid to be contracted *infra Jurisdic^t Curie*, if the Defendant will plead to it he may,

may, but he shall never be admitted to assign for Error, that the Debt did arise *extra Jurisdiction Curiae*. But if he had tendered such a Plea in the Inferior Court upon Oath, then if they had refused it, it would have been Error. 1 Vent. 236.

Plaintiff brought Action in *London*, for that the Defendant called the Wife of the Plaintiff Whore. The Defendant removes this into the *King's Bench* by *Habeas Corpus*. *Procedendo* was moved for, but denied, for such a Custom to maintain Action for such brabbling words, is against Law. This was *Oxford* and his Wife Plaintiffs, against *Cross* Defendant; and in *Bower and Coopers Case*, 13 Car. Cro. 486. There it was adjudged that a *Procedendo* should be granted, for that an Action lies in *London* for these words by the Custom; because a Whore there is to suffer Corporal Punishment, viz. Carting and Whipping. And it is an Offence presentable at the Wardmotes Inquest, and there punishable. But in 9 Car. there in such case the Court denied to grant a *Procedendo*, because no Action lies for such words.

For calling a Whoman Whore.

The Advice in *Roll* is, That if it be dubious whether it be a good Custom or nor, it is better not to remove it; for if it be removed it is final, and no Writ of Error lies upon it, but the Party is without other Remedy; but if they proceed upon it in *London*, and Judgment is given upon it, a Writ of Error lies in the *Hustings* by Commission, and so the Party may have a legal Remedy. 2 Rol. Abridg. 69. in many cases a *Procedendo* hath been granted.

Error in the Hustings.

By the Custom of *London*, Executors or Administrators shall be charged upon the Simple Contract of their Testator. 5 Rep. 82, 83. 8 Rep. 126.

By the Custom of *London*, a Man may be arrested to find Security for his Debt before it is due. 8 Rep. 126. *Vid. supra*.

So to arrest, and then enter the Plaint. *Vide supra*.

Error of a
Judgment be-
fore the Mayor
is reformed by
Commissioners.

Error of a Judgment given in the Court of *Guildhall*, before the Mayor of *London*, the reforming thereof ought to be by special Commission in *London*, according to their Charter. But Error of a Judgment given in an Information before the Mayor shall be reformed in *B. R.* and this being a matter concerning the Crown a *Certiorari* was thereupon awarded to remove the Record, which being removed a Writ of Error was brought, *quod coram vobis residet*.

In real Actions.

In a Writ of Entry *sur Disseisin*, the Tenant said that the House in demand is within the City of *London*, and that the said City is an ancient City, and that King *Henry 3.* *Concessit civibus predict' quod non implacitentur de terris & tenementis suis &c. extra muros Civitatis predict'*. And saith he himself is a Citizen of *London*, and demanded Judgment of the Writ; and to the pleading he said further, *Sed illis teneatur rectum infra Civitat. predict' secundum consuetudinem Civitat' predict'*. Exception was taken to the Plea, because the Tenant did not shew before, that by their Custom they ought to be impleaded. *Per Cur.* The Tenant ought to have shewed, that the Citizens for their Lands there ought to be impleaded in the *Hustings*, and these general words will not supply the defect thereof. 4 *Leon.* 12, 13.

Heir sued in a
Burrough upon
the Bond of his
Ancestors.

An Heir may not be sued on the Obligation of his Ancestors within a Burrough wherein he had not any Assets within the Jurisdiction of the Court. *Brown and Carrington*, 16 *Jac. B. R.* 1 *RoL. Abridg.* 494.

Lord Mayor
Coroner.

By Custom the Writ of Outlawry is directed to the Sheriff of *London*, and not the Coroner, who is the Lord Mayor.

The return of all the Outlawries out of *London* in *Banco* is made without saying *per judicium Coronerarium*, but generally.

If an Inferior Court be held by Charter, and the Bail there acknowledge a Recognizance, no *Capias* lies upon this Recognizance no more than in *Banco*, and here cannot be any Custom, and the Recognizance doth not bind his Person. 1 *Rol. Abridg.* 897.

It is a good Custom of *London*, that the Mayor, Recorder, or any Alderman being Justice of the Peace may take Depositions of any Persons produced before them in *perpetuam rei memoriam ex parte alicujus Personæ*, and that such Depositions shall be recorded there in *perpetuam rei memoriam*, and that these Depositions so taken shall be good Evidence to a Jury to induce the Conscience of any one, and to enforce the truth; its a good Custom; tho these Depositions may be taken in *perpetuam rei memoriam* without any Suit depending, *Contra Kinnerly and Cooper.* 1 *Rol. Abridg.* 563.

It is not a good Custom in *London*, that if a Man becomes Bail for another in an Action there, and the Plaintiff recovers against the Principal, and sues a *Capias* against him, and the Sheriff returns a *non est Inventus*, that presently upon this Return, without a *Scire Facias* against the Bail, the Bail may be taken in Execution upon his Recognizance, for this is against the Law and Reason, in as much as if he had sued a *Scire Facias* against the Bail, they might have pleaded the release of the Plaintiff, or death of the Principal. 1 *Rol. Abridg.* 563. *Devered vers. Ratliff.* So it is in Inferior Court.

Vide plus Sparsim.

No *Capias* lies against Bail by Recognizance.

To take Depositions in *perpetuam rei memoriam* without Suit depending.

The Bail not to be taken in Execution without a *Scire Facias*.

C A P. XIX.

Orphans and Devises.

Of the Court of Orphans in London. The Customs. Of security given to the Court of Orphans, and how. Of Hochpot, and the nature of it. Orphans not to marry, not to be put out Apprentices without leave of the Court. Marriage without Consent is finable, and Imprisonment till payment. If the Custom extends to Lands out of London. The Custom of London as to the distribution of the personal Estate. Of Devises by Freemen. If Orphans Money be devisable.

BY an Act of Parliament, Rot. Pat. 1. R.2. N. 130. It is enacted, That the Mayor and Chamberlain of London for the time being, shall have the keeping of all the Lands and Goods of such Orphans as happen within the City, saving to the King and other Lords the Rights of such as hold of them out of the same Liberty.

The Custom of the Court of Orphans.

The Court of Orphans is held before the Lord Mayor and Aldermen of the City of London, who are Guardians to Children of all Freemen of London that are or shall be under the Age of 21 Years at the time of their Fathers Decease. The Common Sergeant of the City is the only Person intrusted by the Court of Aldermen to take all Inventories of Freemen Estates.

For a Judgment in Law as to the Custom of Orphans you have a Case fully resolved in *Hob. 474. Latch's Case.*

It was resolved in that Case, there hath been a Court of Orphans time out of Mind, in London, and there hath been a Custom, if any Freeman or Free-

Freewoman die, leaving Orphans within Age unmarried, that they have had the Custody of their Bodies or Goods, and that the Executors or Administrators have used, and ought to exhibit true Inventories before them: and if any Debt appears due, to become bound to the Chamberlain to the use of the Orphans in a reasonable Sum, to make true account upon Oath of them after they have been received; and if they refuse, to commit them till they will become bound. This was adjudged to be a reasonable Custom, upon the return of an *Habeas Corpus*. The Case was, one *Jane* (Widow Freewoman and Fishmonger of *London*) dyed, leaving divers Orphans, and one *Larch* was Administrator, and had exhibited an Inventory of 1000 *l.* Debts unreceived, and was required to give Bond of 2000 *l.* Security, which he refused to do *per quod*, &c. It was adjudged good and reasonable; and if the Ecclesiastical Court will compel them to make account there, against this Custom a Prohibition lies; and it was alledged for the Prisoner in that case, that he was already bound in the Prerogative Court to make account, and so he should be twice bound, but to no purpose.

Tho Security to account hath been given at Common Law, or in the prerogative Court, yet the Court of Orphans will compel to give new Security.

For it was in the case of one *Andrews*, 17 *Jac.* B. R. a Woman before she contracted marriage with *J.S.* agrees with him that she shall have power to devise a Sum of 200 *l.* to any Person, and after the Marriage, she, by her Will, gives this to the Children of her first Husband, and dies; the Husband after acknowledgeth a Judgment at Common Law, for the Security of it; yet by the Custom of the Orphans of *London*, he may be compelled by the Court of Orphans to give new Security for this to the Chamberlain of *London*.

The youngest Attorney in the Lord Mayor's Court is always Clark of the Orphans, and is appointed to take all Securities for Orphans Portions, which

The Chamberlain of *London* a sole Corporation.

which Securities are constantly taken in the name of the Chamberlain of *London* for the time being; and to this purpose the Chamberlain is a sole Corporation to him and his Successors for Orphans. And in *Fullwood's Case*, 4 Rep. a Recognizance or Bond made to him and his Heirs concerning Orphans, shall by the Custom of *London* go to his Successor. And this is not like the case of a Bishop, Parson, Vicar, Master of an Hospital, &c. or such sole Corporation; for there no Chattel, either in Action or Possession, shall go in Succession, but the Executor or Administrator shall have them.

1. Because they cannot take Recognizance or Bond in their politick Capacity.
2. Neither have they such Custom.

Prohibition lies if sued elsewhere.

Note, This Court of Orphans is such a peculiar Court, that if any Orphan sue in the Ecclesiastical Court, for any Goods, Mony, or Chattels due to them, or by the Custom of *London*, or for any Legacy, or to have an Account, a Prohibition lies. 5 Rep. 73.

Orphans not to marry, or be put out Apprentices, without leave of this Court.

The Security must take particular care, that none of the Orphans marry or be put out Apprentices, without the leave of the Court of Aldermen first obtained for that purpose, and the Court of Aldermen do commit the Custody of Orphans to such Person and Persons as they shall think fit; and if any Person do marry without the Consent of the same Court first obtained, such Person may be fined by them according to the Quantity and Portion of the Orphan; and unless such Person do pay the Fine, or give Security to pay it, the Court may commit him to *Newgate* to remain there till he submit to their Orders, and this hath been adjudged good in the Court of *King's Bench*. It was one *Wilkinson's Case* against Sir *William Bolton*, Pasch. 17. Car. 2. which was this,

Marriage without Consent is Finable and Imprisonment till payment.

An Action of Trespass was brought for Battery and False Imprisonment ; the Defendant justifies by the Custom of *London* of the Court of *Orphans*, and that a Freeman died and left his Daughter under 18 years of Age, for such is the Age of a Female, and unmarried ; and that the Court committed the Custody of her to Sir *William Bolton*, and sets forth the Custom, that if any such Ward be taken away, &c. they may commit the Party to *Newgate* who does this, to be imprisoned till he produce the Infant, or be delivered by due Course of Law ; and because the Plaintiff took her away, he was committed. *Pasch. 17. Car. 2.*

The Plaintiff demurs upon the Plea.

1. Because the Custom to imprison is unreasonable, for that no time is allowed to the Party to make his defence.

2. Its too generally laid to imprison all, and so a Peer may be imprisoned.

But *per Curiam*, its a great Offence and Contempt, and the Custom is reasonable, but there seemed to be a Fault in the Plea ; for the Bar was, that the Infant was of such an Age, and unmarried at the time of the death of her Ancestor, but does not say she was unmarried at the time of the taking, but it was overruled, for that a Bar shall be good to common Intent. *Vid.* This Case reported in *Raym. p. 110.*

Note, This Custom to have the Custody of the Person, and of all the Estate, Real and Personal, extends to Lands out of *London* : But it hath been a Question, If a Freeman discontinue from the City, and discontinue his Trade, and dies, leaving his Children and Estate in the Country, whether the Court of *Orphans* shall intermeddle with them, and it was the Opinion of *Hide* Chief Justice, that they shall not intermeddle.

Orphans Mony
in the hands of
the Chamber-
lain, not devi-
sable by the
husband.

A. B. an Orphan of *London* married to *W. P.* before he was of the Age of 21 Years, and not having taken out the Mony, dies, having bequeathed the Mony to his Wife, provided she should not claim a Dower: she brought Dower against *P. P.* Brother of *W. P.* her late Husband; he brings a Bill in *Chancery* to make discovery of the Estate, and to compel her to release Dower or renounce the Devise. The Question is, Whether the Mony in the Court of Orphans were devisable or not.

Per Lord Keeper Bridgman, Twisden and Wild, it is a thing in Action and so not devisable; the Custom of Orphans is when they are under Age, they find them Mony for maintenance while they are under Age, and no more; yet when the Orphan comes of full Age, or the Female marries, it is cast up, and the Interest is fully paid. In this case it was the Laches of the Husband that he did not recover it; for by the Custom it is to be paid at the full Age, or marriage of the Female Orphan; and the Custom is upon the marriage of Orphans, to appoint the Common Sergeant to treat and take Security for the Orphan. 2 *Ventr.* 240. *Pheasant's Case.*

Executors to
find Sureties to
pay a Legacy.

It is the Custom of *London*, That if any Freeman of *London* devise a Legacy to an Orphan, that the Executor shall be constrained to find Sureties to pay the Legacy according to Law. *Quære* If this Custom be good, for perhaps he shall not have Assets after Debts paid. 1 *Rob. Rep.* 316.

As for the manner of Process, Summons, Conditions of the Bond for exhibiting an Inventory, the Appraisement, the Security, Bond (if the Mony be not paid into the Chamber,) &c. *Vid. Lex Londinensis*, or the City Law.

Wills.

The Custom of *London* is, That if the Father advance any of his Children with any part of his Goods, that they shall bar them to demand any farther

farther part, unless the Father under his Hand, or by his last Will did exprefs and declare that it was but in part of Advancement, and then that Child so partly advanced shall put his part in *Hotchpot* with the Executors and Widows, and have a full third part of the whole, accounting that which was formerly given to him as a part thereof, and this is that which the Civilians call *collatio bonorum*.

The Custom of London as to a Freeman's Will.
Hotchpot.

Some expound the Custom thus,

If a Man has two Children, and gives to one of them 100 *l.* in part of his Advancement, and then dies worth 900 *l.* in this case the Wife, the Issue not advanced, and the Executor shall have but three equal parts of the 900 *l.* viz. 200 *l.* apiece, and then the 100 *l.* so given shall be in *Hotchpot* between the Children, which my Lord Coke conceives cannot be; for then there should be no equality amongst the Issues, as the Custom doth require. 12 Rep. 113.

By the Custom of London a Freeman's Widow may require a third part of his personal Estate, after his Debts paid, and the Funeral discharged, and his Children may require another third part thereof, and he may by his Will give away another third, part. But if he have no Children, the Widow may require a Moyety of his personal Estate. But a Freeman in the time of his Sickness cannot give away any part of his Estate. If a Freeman die without a Will, Administration shall be granted to his Wife, and she will claim one third part, and one third must be divided amongst the Children, and the other between the Wife and Children, and usually the Widow is allowed two thirds of the Freeman's Estate.

The Custom of London as to a Freeman's personal Estate.

The Father of a Freeman of London possess'd of a Term, assigns it by Deed to his Son for a Provision, and dies the Mother sues in Chancery for

Voluntary assignment of Goods shall not exclude the Wife of her the Customary part

the customary part, and upon Issue tryed before *Hale*, the Wife shall not be bound by this voluntary Estate, but that she shall be entitled to the customary part of it ; the same as to Goods.

C A P. XX.

Customs of London as to Apprentices.

Where, and in what cases a Freeman of London may use a Trade to which he was not Apprentice, and where, and in what cases not. To what Covenants, Apprentices are lyable by the Customs of London, and how pleaded. One may bind himself Apprentice at the Age of fourteen. To bring Action at Common Law general, and to maintain by Custom if a Departure. A By-Law cannot make the Bond or Covenant void. The Custom as to the Inrollement of the Indenture. Of a Turn-over. The manner of alledging Custom, and not laying Usage. The Charters of London not any dispensation with the Statute 5 Eliz. c. 4. of Trades. No Freeman to employ one in a Trade that had not been Apprentice. Concerning the Masters making the Apprentice Free. A President as to the Custom of London, that if the Apprentice be not inrolled by the Master he may sue out his Indentures, and the Apprentices petition in French to the Mayor and Aldermen.

INformation for the King and himself against *Bagshaw*, for occupying the Trade of a Goldsmith, not being Apprentice thereunto. Defendant

dant pleads the Custom of *London*, that one being Apprentice for seven Years, and made Freeman of *London* of any Trade, may use any other Trade in the said City, and shews he was bound Apprentice to the Cordweyners, and served them for 7 Years, and was made Freeman of *London*, and so justifies. Exception to the manner of Plea was, because he pleads that *uti possit* any other Trade, and not *quod usus fuit*, and for that was relied upon 22 *Edw.*

Where a Freeman of *London* may use a Trade to which he was not Apprentice, and where not.

4. 8. Prescription *quod possit turner son Plough*, and doth not say he had used to turn, &c. is not good. But this being alledged by way of Custom in the City, and not as a particular Prescription is well enough, as every Citizen of *London*, may devise in *Mortmaine*. The Recorder certified, *ore tenus*, that there was not any such Custom generally; the Custom is not that one brought up an Apprentice in the Trade of a Cutler, &c. being a Freeman of *London*, may use any other manual Trade. But one of a Trade who useth buying and selling, may exercise another Trade of buying and selling. *Cro. Car.* 347, 361. the King against *Bagshaw*.

To what Covenants Apprentices are liable by the Custom of London, and how pleaded.

BY the Custom of *London* an Infant may bind himself Apprentice, and it shall be good; not so at Common Law,

4 *Leon.* 77. *Cro. Eliz.* 652. *Bold* and *Wallis's* Case, 14 & 15 *Car.* 2. Covenant was brought against an Apprentice by Indenture. Defendant pleads he was within Age. The Plaintiff in his Replication maintained the Action by the Custom of *London*, that he may bind himself at the Age of fourteen. It was a great Question in those Books, and much argued, whether to bring his Action at

One may bind himself Apprentice at the Age of 14 years

Common-

To bring an
Action at Com-
mon Law ge-
neral, and to
maintain by
Custom if a
Departure.

Common Law generally, and maintain by a Custom, be a Departure. *Per Windham* Justice and *Fisher* chief Justice, it is no departure, being no matter varying from the Count, that being but supposal, and all was general, this special matter is a good support. The Gift of the Action is laid in *London*, and the Title is the same still, only the Person enabled. But by *Twisden* all the Presidents are to count on the Custom, as being the ground of the Action, and it is a departure; but the Action was discontinued.

In Action of Covenant on Apprentiship. Defendant pleads a By-Law in *London*, by the Common-Council there, that if any Freeman took to Apprentice the Son of an Alien, the Bond and Covenants shall be void. *Per Cur.*

By-Law cannot
make Bond or
Covenant void.

This is no Plea; for the Common-Council cannot make Bonds and Covenants void, but they may inflict a Fine or Punishment upon such a Master for taking such Apprentice. *Moor 411. Doggrell and Peck.*

Inrollement of
the Indenture.

The Apprentice may at any time before one Year (if his Master doth not enroll the Indenture) exhibit a Petition in French to the Lord Mayor and Aldermen, and have a *Scire Facias* against his Master, to shew why the Indenture was not enrolled; and if he doth not shew a sufficient cause (as that he would not bring the Apprentice personally, as he must, or some such cause) then he may sue out his Indenture, and be discharged of his Master. *Palmer 361.*

But this case is more fully reported, 2 *Rel. Rep.* 305. and it is this, In a Writ of Error between the Master and the Apprentice, they were at Issue upon the Custom of *London*, and the *Certiorari* awarded to the Mayor, and the Recorder certified then, where any Man within the Age of 21 Years, and not under the Age of fourteen, binds himself
by

by Indenture, in which are many Covenants; these shall bind the Infant although the Deed was not inrolled before the Chamberlain within the Year; but with this difference, That the Apprentice may come in before the Mayor and Aldermen, and there shew the matter *per* Petition in *French*, that the Deed is not inrolled within the Year, and upon this a *Scire Facias* shall issue forth to the Master to know why the Deed was not inrolled; and if upon his default the Indenture was not inrolled, the Defendant (the Apprentice) may sue out his Indenture and shall be discharged; but if it was not inrolled through the default of the Apprentice, as if he would not come to be present before the Chamberlain, but absent himself, then he shall not be discharged; for the Deed may not be inrolled unless the Defendant be present in Court. *Vide*, the President *infra*.

In Action of Debt on Bond, whereof the Condition is to perform Covenants in Indenture of Apprentiship in *London*. The Defendant pleads the Custom of *London*, that the Indenture shall be void if it be not inrolled within the Year, and this Custom is traversed, this shall be tryed by the Mayor and Commonalty by the Mouth of the Recorder. *Coke's Entr.* *Debi* 144.

Action of Covenant was brought on the Custom of *London*, that an Infant above 14, and under 21, may bind himself Apprentice, and that the Master shall have *tale remedium*, as if he were 21, its good, and he need not alledge that the Custom is, that he shall have Action of Covenant against him; for *tale remedium* implies as much. *Mod. Rep.* 171. *Horn and Chandler.*

The Custom of *London* is, to turn over an Apprentice from one to another, and he to whom such Apprentice is turned over may have an Action of Covenant upon special Issue on the several breaches assigned,

Tryal of the Custom.

Action of Court against Apprentices.

Tale remedium what it implies.

Turnover.

assigned, and the Plaintiff in such case had a Verdict.

Tho it was moved in arrest of Judgment

1. That *Abstraxit se a servitio* so many Nights, and during that time did not serve him; but it being found against him its good enough.

2. It is said he did not serve according to his Covenant, whereas no Covenant was made with the Plaintiff, yet it is good enough, and the conclusion & *sic non tenuit convencionem* made with the Plaintiff is as good as can be. 1 Keb. 250. *Bowcher and Coster.*

The manner of alledging the Custom, and not paying Usage.

In Covenant it was laid, That every Freeman may take an Apprentice, and that Infants may bind themselves to serve.

It was objected, That this Custom was alledged *in feri*, not *in facto*, for usage is not added to it, as the Custom of a Manor was laid to be, that every Tenant *potuit & potuisset sursum reddere* is ill; so *licet & licuit* for the Lord to assess a part, but *Curia contra*, as old *Entries* 142. a Custom that every Citizen and Freeman might devise in *Mortmain*, allowed good. 1 Cro. 347. *Raym. Windhurst and Gibbs.*

It hath been a Question often debated, Whether an Apprentice, by the Custom of *London*, being Bound, and Free of one Trade, may exercise another, which is settled in the King and *Bagshaw's* Case. *Vide supra.*

The Charters of *London* not any Dispensation within the Statute of 5 *Eliz. c. 4.* of Trades.

The Charters of the City of *London* may not be any dispensation with the Statute of 5 *Eliz. c. 4.* That none shall use a Trade without having been Apprentice to it seven Years. As in *Kilderbies* Case, who was Indicted at the Sessions in *Suffolk* for using the Trade of a Woollen-drapeer in *H.* in the said County for 3 Months next before the Indictment, he never having served as an Apprentice to it, against the Statute 5 *Eliz. c. 4.* which Indictment

dictment being into the *King's Bench* by *Certiorari*, the Defendant pleads a special Plea, that he is a Freeman of *London*, and pleads the Charter of 15 H. 3. that the Citizens of *London* may freely & sine impedimento negotiate, de rebus & merchandis suis, and may reside where they will in *England* for that purpose, and he pleads the confirmation of the said Grant by Act of Parliament, and that he did reside at *H. præd' cum quibusdam mercimoniis pannariis emen' & venden'*, &c. which is the same using the Trade of a Grocer, supposed in the Indictment, and traverseth, that he used the Trade of a Draper for 3 Months mentioned in the Indictment, *aliter vel alio modo*. And Judgment was given for the King. For the intent of the Charter is only to give Citizens and Freemen of *London* leave to sell their Merchandizes, and reside where they will; notwithstanding some Burroughs and Cities claim a Liberty to exclude Forreigners. *Dier* 279. 2 *Rep.* 128. 1 *Sand.* 311. *Sid.* 417. The same Case, and the Traverse was held to be ill, which goes to the entire time only, where it ought to go to every part of the time *distributive*; for if he had used the Trade by one Month, tho he had not used it for 3 Months, yet he ought to be convicted for one Month, and acquitted of the other, if the Traverse had been rightly taken. Traverse ill.

A Record was removed out of *London* in *B. R.* by *Habeas Corpus*, and it was on a Debt on a By-Law, that no Freemen should employ any Person in any Trade which had not been Apprentice to it, or a Freeman of *London*, and that the Defendant had employed one in the Trade of an Upholsterer, which had not been Apprentice to it, and a *Procedendo* was granted. *Sid.* 260. *Player* and *Petill*. No Freeman to employ one in a Trade that had not been Apprentices.

Concerning the Master's making the Apprentice Free.

IN *London*, if any Master shall refuse to make his Apprentice Free, when the Term in his Indenture is expired, upon Complaint thereof made to the Chamberlain, he will cause such a Master to be summoned before him, and if he cannot shew good Cause to the contrary, will make the Apprentice Free.

In other Corporations he may have a *Mandamus* to be directed to the Mayor, &c. to make him Free, if the Master refuse to do it. *Townsend's Case*, Ray 69.

So it was in *Norwich*, Hill 15, 16. Car. 2.

In *Townsend's Case*, the Mayor and Commonalty of *Oxford* returned to the *Mandamus*, That if any Person binds himself to be an Apprentice, he is by the Course of their Corporation to be inrolled; and *Townsend* bound himself Apprentice to C. by which he covenanted he would not contract Matrimony during his Apprentiship, and that the Indenture was enrolled, and that he within the first two years of Apprentiship did marry, and after this he served as a Journeyman rather than as an Apprentice.

Two Exceptions to this return.

1. Tho he covenants he will not marry, yet if he marry this is only a breach of his Covenant, but not any cause to bar him of his Freedom.

2. This return, that he served him rather as a Journeyman than an Apprentice is uncertain, and not positive. *Raym.* 92.

Et pꝛes C. E. p. C. f. Attoꝝ suum ven'
 &c. & dic' quod pꝛ J. R. actio non, &c.
 quia dicit quod civitas Lond' est antiqua ci-
 vitas in qua quidem civitae talis hec'ur &
 a toto tempore cujus contrarii memoria ho-
 minu' non existit hebatur consuetudo usitae
 & approbae Quod si aliquis ponit se Ap-
 pꝛenticu' alicui libero homini Civitae Lond'
 p termino septem Annoꝝ vel amplius ad de-
 serviend' hujusmodi libero homini in arte illa
 qua liber homo ibi utitur & ipse idem liber
 homo infra pꝛimum Annum Appꝛentic' non
 procuraverit eund' Appꝛent' irrotulari aut
 saltem notare Anglice *noted* secundum anti-
 quam consuetud' dicte Civitae coram Came-
 rario aut subcamera' civitatis Lond' p tem-
 pore existen' in camera civitat' pꝛes scituae
 in Parochia Sancti Michis Bassishaw in
 Warda de Bassishaw infra Civitae pꝛes
 quod tunc idem Appꝛenticus possit exhibere
 petitionem suam Majori & Aldermannis
 pꝛ Civitae p tempore existen' in Curia dicte
 Dni Regis coram eis in Camera Guilhae
 Lond' in pꝛ Paroch Sancti M. B. in Warda
 de B. pꝛes a toto tempore pꝛes tent' pꝛinde
 petend' quod ipse idem Appꝛenticus possit
 exonerat' verlus magistrum suum de residuo
 termini Appꝛenticii sui tunc ventur' ac quod
 committatur alicui alio prob'o viro ejusdem
 artis qua idem Magister utebatur ad de-
 serviend' resis termini pꝛdicti. Et super pe-
 ticon' ill' ut pꝛefertur exhibit' ad petitionem
 hujusmodi Appꝛenticii in petitione ill' p
 eandem curiam pꝛecipetur servien' ad cla-
 bam & ministro Curie pꝛ quod ipse secundu'
 consuetud' dicte Civitat' pꝛemonicionem re-

lingueret apud domum manconal' hujusmodi
 Def' in petitione illa nominat' de petition'
 pred' versus eundem sic ut prefertur exhi-
 bit' essend' ad p'or' curiam dicti Dni Regis
 in Camera Guildhal' Civitat' pred' coram
 Majore & Aldermannis Lond' predict' extunc
 tenend' ad respons' quet' in petitione ill' de
 placito in ead' specificat'. Et si idem serviens
 ad clavam eid' curie Certificaret quod ipse
 p'emonicionem reliquit apud domum Man-
 conal' hujusmodi Def' de Petitione pred'
 Ita quod idem Def' esset ad dictam p'or'
 curiam dicti Dni Regis in dicta Camera
 Guildhal' Civitat' predict' coram prefat' Ma-
 jore & Alderman' tenend'. Et hujusmodi
 Defend' ad Cur' illa ac tres alias Cur' dicti
 Dni Regis coram prefat' Majore & Alder-
 mannis Civitatis pred' p' tempore existen' in
 camera pred' seperatim tunc p' tenend' videl'
 ad Quatuor hujusmodi Curias solemniter
 evace non venerit sed defale fecerit quer' in
 ead' petitione ad quamlibet earundem curiarum
 comparen' & ead' defale sup dice defend' recoz-
 dat' fuer' quod tunc ad earundem quatuor curi-
 arum ad petitionem hujusmodi Quer' precipere-
 hujusmodi servien' ad clavam ac ministros Cui
 pd' quod ipse scire faceret p'fac' def' essend' ad
 p'or' curiam dicti Dni Regis in Camera
 Guildhal' Civitat' pdict' coram Majori &
 Aldermannis Civitatis pdict' tenend' ostendend'
 si quid p' se habeat vel dicere sciat quare hu-
 jusmodi Apprent' penitus non evoneretur
 versus eundem defend' magistrum suum de
 resid' termini Apprenticii sui ad tunc ven-
 tur'. Et si idem servien' ad clavam eid' cu-
 rie adtunc certificaret quod ipse Scire fec'
 p'fat' def' in petitione pd' essend' ibid' in ead'
 curia

curia & p̄d def' ad curiam illam solempnit' exact' non compuit sed defale fecerit ad petitionem p̄d Apprent' in petitione p̄d p eand' curiam adjudicabitur quod ipse apprenticius penitus exoneretur versus p̄dīa' def' magistrū suū de resid' termini sui p̄dīa' tunc ventur' & quod committeretur alicui alio p̄bo homini ejusdem artis qua idem Magist' utebatur ad deserviend' resid' termini sui p̄d' & idem quer' dicit quod consuetud' p̄d' & omnes consuetud' Civitatis p̄d' Auctoritate Parliamenti Dñd Richardi nup Regis Anglie secundi post conquestum Angl An' Regni sui septimo apud Westm' in Com' Middlesex tene tunc Major' & Communitat' dicte Civitatis & Successoribus suis Ratificat' & Confirmat' fuer'. Et idem quer' ulterius dicit quod ipse idem quer' 10 die Augusti Anno Regni dicte Dñd Regis nuper 24 supradicta' apud London p̄d' in Parochia & Warda p̄dīa' posuit se Apprentic' p̄fatus Defend' p octo annis more Apprenticii deserviend' modo & forma p ut defend' p narrationem suam p̄d' superius allegavit quodq; p̄d' def' iuxta primū Annū termino p̄d' Apprenticii p̄d' dicto quer' non pcurabit dictum quer' irrotulari nec notar' (Anglice) marked secundum consuetud' p̄d' dicte Civitatis coram camerar' vel subcamer' Civitatis p̄d' p tempore existen' in Camera Civitat' p̄d' in Parochia & Warda p̄d' ut p̄fertur existen' Et idem quer' ulterius dicit quod supinde postea scil' 7 die Octobris Anno Regni, &c. 28 ad Cur' dicte Dom' Regis in Camera Guich' Civitat' London p̄d' scituat' &c. coram S. S. Mil' tunc Majore & tunc Aldermannis dicte Civitat' London secundum consuetud' Civitat' p̄d' a toto tempore p̄d' usitac

& approbat tunc tene dictus quer in ppria
 psona sua ven' & tunc & ibid exhibuit Ma-
 jori & Aldermannis pd & curie pd petition'
 suam secundum consuetud pd Civitatis pd
 versus dict' def' magistrū suū cujus quidem
 peticonis tenor sequitur in hec verba. Al
 honozables & tres lages Senioz' les Majoz
 & Aldermanns del Citie de Londres mon-
 sire tres humblement T. C. filius S. C. de
 &c. que il leise Plaint envers J. R. Citizen
 &c. de ceo que come le jour de Noust en l'an
 del Dom' 1676 & en l'an del raigne del no-
 sire Roy Charles le 2. 28 en Parochia de
 Sancte Christopher de Londres vostre dit
 suppl' p un Ind' de Apprentiship la donq
 fuit lye de l'un party & le abandit J. R. del
 auter party (l'un pty de quel Indene obelq
 le Seale de dit J. enscale nostre dit suppl'
 icp monstre' al Court) mist luy mesme Ap-
 prentice (solongues le Custome de la Citie a-
 bandit) al dit J. R. adonq esteant un frank
 hom' de la citie & la Societie des Grocers
 deins la Citie usant pour apprendre le Art
 que dit J. R. adonques usa & obelq luy en
 manier de son Apprentiz a demurrer & de
 serbier a le fest del Annunciation beate Marie
 la Virgin adonq darraigne passe devant le
 date del dit Indentur tanq al fine & terme
 des huit ans adonq pechein ensuant & ple-
 nement accomplices come p le dit Indenture
 d' Apprentiship portant dat' le jour & ann
 abandit plus pleinement appiert le quel dit
 J. le abandit 10 jour de Noust le Art de 'un
 Grocer deins le City abandit cessalcavoir
 en le Pariss abandit usa nient meins le dit
 J. R. ne ad causa vostre dit suppl' destre en-
 rolle devant la Chamberlein de la dit Citie
 en

en la Chambze de mesme la Citie deins le
 pzmier Ann de son terme de Appzentic'
 avandit selonq' la Custome de la Citie avan-
 dit & pur ceo il poit pleale a vous tres ho-
 norables & trelages Seignozs a vostre sages
 discrecon a ordeiner & adjudger que votrè
 dit suppl' pur le Case avandit poit estre
 oustrement dischARGE envers le dit J. R.
 del residue del avandit terme jamais a
 venire solong le Custome de la Citie avandit
 & que il poit estre commiss' a un auter suf-
 ficient frank home de la avandit Citie de
 Londres usant le Art del un Grocer deins
 le dit Citie & ceo pour l'amour de Dieu & en
 honoz del Charite. Et tunc & ibid idem C.
 C. secundum consuec Civitat' pō a toto tem-
 pore cuius &c. usitat & approbat invenit
 pleg' ad psequend' petitionem suam (viz.)
 J. Doe & R. Roe & tunc & ibid' polo suo J.
 S. Attoznac suum sup quo ad eand' curiam
 cozam Majori & Aldermannis pzed secundū
 consuetud' Civitat' pzed ad petitionem pzed
 C. P. Attozn' suum pō fac' pzecept' fuit ad
 tunc & ibid p eandem curiam cuidam L. A.
 servien' ad clava dictoꝝ Majozis & Alder-
 mannoꝝ ac Ministro Cur' pō quod ipse se-
 cundum consuetud' dicte Civitat' pmonicio-
 nem relinqueret apud domum mancionalem
 dict' J. R. de petitione pō versus ipsum
 eundem J. R. sic ut pfertur exhibit' Ita
 quod idem J. Kessel ad pꝛox' curiam dicti
 Dñi Regis in dicta Camera Guilhal' pzed
 Civitat' London' cozam Majore & Alder-
 mannis Civitat' pō 8 die mensis Octobꝝ
 tenend' &c. ad respons' pfae C. in placito pe-
 ricionis sue pō secundum consuec civitatis
 pō & idem dies tunc & ibid dat fuit pꝛefae
 J. in

J. in placito pō ad quam curiam dicit' Dñd Regis coram Majori & Alderman' in pred' camera Guilha' Civitae pō eos 8 die Octobris tene dictus C. p. Attozñ suum pō comparuit & optulit se versus prefat' J. in placito pō super quo pō servien' ad clavam ac minister Curie pō ad eandem curiam pō' retornabit & certificabit eid' Curie quod ipse dicto die Octob' Anno dicti Dñd Regis nunc 28 supradicto pmonitionem reliquit apud domum Mansionalem dicti Johannis scituat' &c. Ita quod idem J. esset ad dict' Cur' dict' Dñd Regis in dicta camera Guilha' Civitae pred' coram prefat' Majori & Aldermannis dicto 8 die Octob' Anno 28 pred' tenend' ad quem diem Idem C. p. Attoznat suum pred' comparuit & tunc & ibid' optulit se versus prefat' J. in placito petitionis sue pred' super quo ad eand' curiam dicti Dñd Regis coram prefat' Majori & Aldermannis Civitatis pred' in dicta camera Guilha' Civitae pred' dicto 8 die Octobi Anno 28 pred' J. R. ad petitionem pred' Attozñ pred' J. solemniter exace fuit & non comparuit sed pñmam tunc & ibid' fecit default' &c. Sc' (4 defaults) que quidem quarta default' prefat' J. ad tunc & ibid' ad eand' curiam Recordat fuit post quas quidem quatuor defaultas sup' prefat' J. sic ut pñfertur Recordat ac petitionem dicti C. p. Attozñ suum pred' face (viz.) ad Curiam dicti Dom' Regis coram &c. tenet pcept fuit quod secundū consuetud' Civitae predicte tunc & ibid' ad curiam pō pñat servienti ad Clavam quod ipse secundum consuetud' Civitae pred' pmoneret & certificaret pñat essendi in Cur' dicti Dñd Regis in camera S. Civitae pō coram

coram prefat Majori & Aldermannis Civita-
 tae pred' die dicti mensis Octobz' Tenend'
 ad ostend' & demonstrand' si quid p se heret
 aut dicere sciret quare pred' C. penitus non
 exoneretur versus pred' J. R. magistrū suū
 de residuo termini Apprenticialitatis sue ad
 tunc ventur' & quid idem serviciū ad clavam
 supinde faceret eid' curie tunc certificaret ad
 quam quidem Cur' dicti Dom' Regis dicto
 die mensis Octobz' Anno 28 pred' coram p-
 fato Majori & Aldermannis in dicta Camera
 G. Civitae pred' tene dictus serviciū ad cla-
 vam retorū & certificabit eid' curie quod ip-
 se virtute precepti pred' sibi direct' 10 die
 mensis Octobr' Anno 28 supradice coram
 prefat Majorz' &c. quod premouit & Sci-
 re fecit prefat J. R. essend' ibid' in dicta Cu-
 ria dicto die mensis Octobz' Anno 28 pred'
 coram prefat Majori & Aldermannis in
 dicta camera G. civitatis pred' tene prout ei
 preceptum fuit &c. Super quo ad eand' Cur'
 dictus C. C. per Attorū suū pred' optulit
 se versus prefat J. R. in placito predict' &c.
 & pred' J. R. adtunc & ibid' ad eandem Cu-
 riam ad periconem dicti Attorū dicti J.
 R. solempniter exace fuit & non comparuit
 Ideo tunc & ibid' secundum cons' Civitae
 pred' a toto tempore cujus contrarii memo-
 ria hominum non existit usitae & approbat'
 consideratum fuit per eand' curiam quod
 pred' C. C. penitus exoneretur versus pre-
 fat J. R. magistrū suū de pred' resid' ter-
 min' Apprenticialitatis sue tunc ventur' se-
 cundum formam petitionis sue pred' ac con-
 suetud' Civitatis pred' prout per Recordum
 inde plenius liquet & apparet ratione cujus
 dice C. C. post iudiciū pred' dicto die
 Octobris

Octobris Anno 28 pzed' & continue abin-
 de usq; seipsum a serbitue pzed' J. longe-
 bat pout ei bene sicut absq; hoc quod idem
 C. recedebat seu seipsum elongabat a ser-
 bitio pzed' J. ante iudicium pzed' modo &
 forma pout pzed' quer' superius versus
 eum narrabit Et hoc &c. Cum hoc quod
 idem C. verificare vult quod pzed' J. &
 in narr' pzed' nominat & pzed' J. & in Re-
 cordo pzed' superius nominat est una &
 ead' persona & non al' neq; diversa quidq;
 pzed' C. C. in narracone pzed' superius si-
 milie nominat est una & ead' persona & non
 alia neq; diversa.

The Law of Corporations.

C A P. XXI.

Customs in Inferior Corporations, and some in London.

In Lichfield, for a certain Quantity of Corn of those that brought Grain to the Market. Gravesend, not to transport Passengers without their Licence. Bristol, concessit solvere. Salisbury, of assaulting an Officer and others. Shrewsbury, to imprison for Contempts at their Discretion. Norwich, Wharfage and Crainage. Toll-thorough Norwich. To give the true Debt to the Plaintiff, though it be upon a Bond. Tewksbury, a Distress on Tax to repair a Bridge. Exeter, Forfeiture for reviling the Master and Wardens, and Sale of the Goods on Non-payment. Trinity-House in Deptford, A good By-Law, but not made by sufficient Authority. When and in what Cases By-Laws shall bind Strangers. The Difference between making and using of a Trade. Weighing Goods at the Common Beam.

L I C H F I E L D.

IT is a good Custom, that the Corporation of *Lichfield* had had a Market there time out of memory, &c. and that the Corporation ought to repair the Way to it, and to appoint a Bell-man to sweep the Market-Place, and in Recompence of this the said Bell-man, time out of mind, of those that brought Grain to the Market and unknit their Sacks there to sell it, had used to take a Pint of Grain, if it be but a Bushel or under; but if it were above

A certain Quantity of those that brought Grain to the Market.

above a Bushel then a Quart to the Use of the said Corporation. For the Men who are chargeable with it have a reasonable Benefit by it. 1 *Rolls Abr.* 561. *Hill* and *Hawkes*.

G R A V E S E N D.

Not to transport Passengers without the Licence of the Company of Watermen of Gravesend.

It is a good Custom, that the Corporation of *Gravesend* had used time out of memory to maintain a Barge for Passengers between *Gravesend* and *London*, and that no Foreigner ought to transport any Person from *Gravesend* to *London* without Licence of the Company of Watermen of *Gravesend*. *Pincock* and *Sanders*, *ibid.*

C O L C H E S T E R.

A Custom was alledged in *Colchester* to be, that no Artificer, being a Foreigner, might use a Trade within the Town. It's a void Custom by two Judges against two Judges. *Carter's Rep.* 114. Mayor and Commonalty of *Colchester's Case*.

B R I S T O L.

Covenant by Word.

Judgment was given in Court of the City of *Bristol*: The Case was, *B.* was Plaintiff against *W.* in Action of Covenant, and declared of a Covenant made by Word by the Testator of *W.* with *B.* and declared also that within the City there is such a Custom that *Conventio ore tenus facta* shall bind the Covenantor as strongly as if it were made by Writing. But *Per Cur'* that Custom doth not warrant this Action; for the Covenant binds by Custom the Covenantor, but doth not extend to his Executors, and a Custom shall be taken strictly. and the Judgment was reversed. 1 *Leon.* 2. *Wade* and *Bemboe*.

SALISBURY.

S A L I S B U R Y.

In Trespass of Assault by *Jerom.* and *Avice* his Wife, and the Action was laid in *Middlesex*. The Defendants pleaded, That *Salisbury* is an ancient City, and that within the same there is this Custom, that if any make an affray and assault any Officer of the said City or any other, if he upon whom any such Assault is made complain unto the Mayor of the said City, that the Mayor for the time being may send for him who made the affray as a Justice of Peace to make him to answer to it, and shewed farther, that the Plaintiff made an affray within the said City, of which Complaint being made to the Mayor, the said Mayor sent the Defendants, being Constables, to bring the Plaintiff to him; by Virtue whereof they went to the House of the Plaintiff, and signified to him the Commandment of the said Mayor, and would have brought the Plaintiff to him, and the Wife of the Plaintiff did assault them; and they *molliter* put their Hands upon the said Wife, &c. And the Plaintiff demurred. 1. The Custom is not good or reasonable. 2. To be a Justice of Peace doth not lie in Prescription; for not one Justice of Peace was before the Sat. of *Ed. 3.* and then the Commencement being known, there cannot be Prescription of it. 3. Admit the Mayor was a Justice of Peace, yet he cannot determine any thing out of the Session. 4. The Prescription is that the Mayor might send for him in such case in any place within *England*. 5. It is not shewed that they of *Salisbury* have a Corporation so as they might be enabled to prescribe. *Per Cur^o* Judgment was given for the Plaintiffs; for the Plea was held naught, for that the Custom is so general, and also for the fourth Exception. 1 *Leon. p. 106.*

Assaulting an
Officer and
other.

Custom laid
too generally.

The Corpora-
tion is not
shewed.

SHREWSBURY.

In false Imprisonment the Defendant justified by Prescription, that they have used if any Person within their Town *contemptuose se gesserit* against the Bailiffs of the said Town, or any Warden of any Trade there, to commit such Person to Prison for the Space of a Day or more at the least at their Discretion: and shewed farther, That the Plaintiff did misbehave himself *tam factis quam verbis* against the Wardens of such a Mystery in the said Town, &c. and when the Bailiffs *super queremoniam inde eis factam* sent for the Plaintiff, he would not come to them, but misbehaved himself against them *tam dictis quam factis*, for which they did commit him to Prison, &c. The Plaintiff demurs, and had Judgment, for this Prescription is not good, for it is too large to imprison Subjects at their Discretion. also they have set forth the Offences of the Plaintiff generally, *viz.* not behaved *tam factis quam dictis*, without alledging any Misdemeanour in certain. 2 Leon. 34. Collet and the Bailiffs of Shrewsbury.

To imprison
Subjects at
their Discre-
tion.

NORWICH.

Action was brought upon the Custom of Wharf-
Wharfage and age and Cranage in the City of Norwich, the De-
Cranage. clARATION sets forth, That they have a common
Wharf and a Crane to it; and then they set forth a
Custom that all Goods brought down the River
and passing by shall pay such a Duty. This Cu-
Toll thorough. stom is not good because it is Toll-thorough, which
is *male Tolnetum*. If they had unladed at any Key
they should have paid it. Or if the Declaration
had set forth that they had cleansed the River. At
Male Tolnetum. Gravesend they claimed Toll of Boats lying in the
River

River of *Thames*. and it was adjudged in Parli-
ment to be *male Tolnetum*. 1 *Mod. Rep.* 47, 48.
Hafpurt and Wills. Norwich.

Action of Debt was brought in *Norwich* upon
Obligation made in *Parochia Sancti Petri in War-*
da de Manouſt in Norwich. And the Defendant
alledged the Custom of *Norwich*, to give the true
Debt to the Plaintiff although it be upon Bond :
and for this he prays may be enquired *de vero de*
bito. This may be tried *de corpore comitatus Nor-*
wich ; for that the Obligation is not in Question, Tryal.
but the true Debt. 2 *Rolls Abr.* 617. *Parmeter*
and *Michleburn*, 1 *Rolls Abr.* 564.

It is not a good Custom in Inferior Courts
(which is not within the Stat. 32 *H. 8.*) to grant
a *tales de Circumſtantibus*, for that is against Law.
Pasch. 16 *Jac. B. R.* 11 *Car. B. R.* *Cowplaid* and
Burnell.

B R I S T O L,

It's a good Custom in *Bristol* in the Court of
the *Tolſey* held before the Sheriffs and Bailiffs of the
City to maintain an Action on the Case *ſur conceſ-* Case *ſur Con-*
ſit ſolvere, (*viz.*) That the Defendant *conceſſit* *ceſſit ſolvere.*
ſolvere to the Plaintiff 60 *l. pro diverſis denar*
ſummis eidem querent per Def. prius *debitis ſol-*
tendis, though it is not good at Common Law,
and although a Man cannot know beforehand up-
on what Contract this is brought until it comes to
Tryal. *Orchard* and *Jenkins*, 1 *Rolls Abr.* 565.

T E W K S B U R Y.

If a Custom be in the Village of *Tewksbury* that
the Bailiffs and principal Burgeſſes of the Town
have uſed time out of mind, &c. to rate and tax
U every

Distress on
Tax to repair a
Bridge.

every Inhabitant within the Village for the Reparation of a Bridge within the Village. If a Tax be made according to the Custom a Distress may be taken for this rate of the Goods of any Inhabitant so taxed, although upon the Tax being made it is not ordained that a Distress shall be taken for it; for no Person can have Action of Debt for this Tax inasmuch as the Corporation is not to have it, and then if a Distress should not be, there would be no Remedy. 1 *Rolls Abr.* 666. *Smithson* and *Ash-ton*.

E X E T E R.

A By-Law in *Exeter* by the Company of Taylors. If any Person or Persons of the said Corporation revile or use any unhandson Speech of the Master or Wardens of the said Corporation, should forfeit 3 s. 4 d. the said Fine to be levied by a Warrant under the Corporation-Seal, and by sale of Goods. And the Plaintiff in Trespass said, &c. *The Masters were a company of Pickpocket Rogues.* In Trespass Judgment *pro Quer'* for a Corporation cannot make a By-Law and have a Forfeiture levied by the sale of Goods. 8 *Rep.* 127. Nor for Forfeiture of Goods. 2 *Ventr.* 182. *Clarke* and *Tucker. Raym.* 292, 293, 294, 324.

No By-Law to
make forfeiture
and sale of
Goods.

A By-Law that there shall be but so many Carrs in *London* is good. *Raym.* 324, 328. But if the By-Law be, That no Carman within the City shall go with his Carr without the Licence of the Guardians of such an Hospital, nor without paying a Rent to such Hospital for the same; if any do contrary he shall forfeit such a Penalty to the said Guardians of such an Hospital, this is void by Law. *Raym.* 324, 328.

Carrs.

Trinity-House in Deptford.

Debt on By-Law by the Master, Wardens and ^{Trinity-House} Assistants of the *Trinity-House in Deptford* being en- ^{in Deptford.} abled to make By-Laws by Car. II's Charter, and this By Law was confirmed by the Chancellor, Treasurer, and Chief Justice. It ran thus: *Quod quilibet nauta dimitteret ad Littus infra 24 horas post deveniret ad Anchoram in Rivo Thamesis omnem quantitatem Pulveris bombardici (aere permittent) sub poena forfeiturs 20 Nobles.* And alledge that the Defendant had notice of this By-Law, and did not do so. Upon Issue of Notice Verdict *pro Quer.* Moved in arrest. *Sander* denied not but it was a good By-Law in it self, but it was not made by sufficient Authority, and he took a difference where the Corporation had Government of the Place to which their Laws extended, and where not. And in this case the Corporation had not Government of the Place nor of the Jurisdiction; and the King by his Proclamation cannot make such an universal Law, nor his Grantee by Commission. *Cur. advisare. Sir Tho. Jones 144.*

A Good By-Law, but not made by sufficient Authority.

By-Laws shall bind Strangers when it is only for ^{When By-Laws} Acts to be made within the Town and for the Pub- ^{shall bind} lick Good. 44 *Ed. 3.* 13. And in the Chamber- ^{Strangers.} lain of *London's* case, that By-Law made in *London* shall bind all, as well Strangers as Citizens, which sell any Drapery in the Hall there, though they inhabit in any place out of the City, and so is the custom of Foreign Bought and Foreign Sold, the which is only for Strangers. 2 *Brownl.* 179, 182.

Upon the Return it appeared, That in the City of *London* there is a custom that no Foreigner shall keep any Shop or use any Trade in *London.* *Ed. 3.* grants that they may make By-Laws: In 17 *H. 8.*

No Foreigner
use a Trade
in London.

several Acts of Common-Council were made for inhibiting Foreigners to hold any open Shop or Lattice. And such a day an Act of Common-Council was made that no Foreigner should use any Trade, Mystery or Occupation within the said City, nor keep any Shop there for retailing, upon pain of 5 *l.* to be paid, &c. That the Defendant held a Shop, and used the Mystery of making Candles, 17 Oct. &c. and so the Plaintiff levied a Plaint and arrested the Defendant.

It was agreed that the Custom was good.

32 Ed. 3. the King by his Letters Patents granted to one *J. F.* that he should be Frank and Free of the City of *London*, and that he should keep an Apothecary's Shop there: But the Patentee could not have his Freedom by this Grant.

Forfeiture.

Dyer 279. In *York* Goods Foreign Bought and For ign Sold shall be forfeited. A good Prescription, but the King by his Letters Patents cannot give such Power to them.

Though the Corporation may justifie a Pecuniary Punishment, yet they cannot inflict Confiscation of Goods or Imprisonment on a By-Law.

The By-Law is good, that Foreigners should not hold any Shops in *London*; for it appears by the Return, that Foreigners shall not be Subject to Scot and Lot in *London*, and shall not be Officers, which are matters of great Charge; so that if it shall be so, they should be preferred before Freemen.

It must be not
that he made,
but that he used
the Trade.

But the sole Doubt was, It doth not appear by the Return that the Defendant had used the Trade of a *Tallow-Chandler*, nor sold any Candles; but only that he kept Shop and used the Mystery of making Candles. But if the Return had been that he used the Trade of a *Tallow-Chandler*, this had been good; for that implies *tantamount*, for that had been that he had sold; for Trade is *in tradendo*,
which

which is to deliver over, and the Intent is, That he shall not be punish'd for making Candles if he does not sell them, for the Sale is the Wrong. And for this Cause it was resolved that the Defendant should be delivered and not remanded. 2 *Brownl.* 284. *Waggoner* and *Fish*. *Finch* said, That this in one *King's* Case was denied for Law. 2 *Sid.* 121.

By-Law in *London*, that every one which sells Goods commonly weigh'd, and does not weigh them at the common Beam called *The King's Beam*, shall forfeit for every Five hundred Weight so sold not weighed, 13 s. and 4 d. On Forfeiture, Debt was brought by the Chamberlain of *London*, which is removed into *B. R.* by *Certiorari*: and if Debt upon this By Law be maintainable here, or there shall be a *Procedendo*, was the Question. *Per Newdigat* Justice, *Procedendo* shall be awarded. Upon *Player* and *Stowell's* Case, 1654. and *Player* and *Osborn's* Case, 1656. 2 *Sid.* 178.

Weighing
Goods at the
Common Beam.

Assumpsit and declares, That the Defendant being in Debt to him for 20 l. Forfeit by the Constitutions and Ordinances of the Company for not serving in the Office of Steward of a Company, according to a By-Law made, promised to pay it, upon which the Defendant demurs. 1. Because the Action does not lie for Money forfeited by a By-Law. 2. Promise may not be made to a Corporation aggregate without Deed. But *per Cur'* the Action lies; and both these Objections were made in the Case of the Mayor, &c. of *London* against *Gorrey*, and Judgment notwithstanding this given for the Plaintiff; and so here. 2 *Levins* 252. the *Barbar Surgeons* of *London* against *Pelson*.

Case for Money forfeited by a By Law made *per Cur.*

Promise to a Corporation without Deed.

C A P. XXII.

Incorporation of Companies.

The Canary Company, that none but such and such should Trade to the Canaries. The Case of the Company of Soapmakers, and the Argument abridged. The Case of the Russia Company.

*Canary Com-
pany.*

TRESPASS for taking away a Ship. Defendant justifies under the Patent, whereby the *Canary Company* is incorporated, and granted that none but such and such should Trade thither on pain of forfeiting their Ship and Goods, and saith, the Defendant did trade thither. Plaintiff demurs; for that he ought to have shewed the Deed whereby he was authorized by the Company to seize the Goods. A Corporation cannot appoint a Servant to sell Trees without a Deed, and the Plea is double, the Defendant alledges two causes of breach of their Charter, *viz.* The taking in Wines at the *Canaries*, and importing them here, and there is a Clause that gives the forfeiture of Goods and Imprisonment, which cannot be by Patent. 8 Rep. 123. Ney. 123. Mod. Rep. 1, 13. *Horn and Ivy.*

Forfeiture.

Hays & al. Plaintiff, Harding & al. Defendant, Pasc. 1656. in Scaccario.

*The case of the
Company of
Soapmakers.*

THE King by Letters Patents dated *May 22. A. D. 1637.* for preventing and reforming of Abuses in the Trade of *Soapmaking*, and the better government of that Trade, did ordain there should

should be in *England* and *Wales*, one Society or Body corporate of Soapmakers by the name of Governors, Assistants, and Commonalty of the Society of Soapmakers, to continue for ever, who had thereby power to elect Officers to search for, and try all Materials and Wares, and Weights and Measures, and to break, burn, or destroy all found or suspected to be adulterate or false, and that none not Free of the Society shall use that Trade without admittance into the Society, upon pain to forfeit all the Soap they should make; and that all Persons to be admitted into that Society should take an Oath for their good Demeanor and Obedience to the Ordinances thereof, and that all that had used that Trade for 7 years should be admitted upon a reasonable Fine. For which Charter of Incorporation they gave the King 43000 *l.* besides 6 *d.* a Tun Impost upon Soap, and divers Laws and Ordinances were made by the Corporation, and confirmed according to 19 *H.* 7. The Plaintiffs were of the Corporation, but not the Defendants, nor had they been Apprentices for 7 Years, but used the same, tho brought up to other Trades, and for using thereof their Goods and Vessels were seized. Whereupon they brought their Action at Law.

Whether this were a good Charter of Incorporation, or a Monopoly within the Statute 21 *Jac.* c. 3. was the Question.

Soapmaking is an Art, Mystery, or a manual Occupation, and of long continuance, and for ought appears to the contrary, it might be in being when the Statute was made, and is as necessary a Trade as others named in the Act, and consequently a By-Law or Ordinance to restrain such as have not served Apprentices, &c. from using it, is a good By-Law, and consonant to Law. All such Patents and By Laws as tend most to the well ordering and

Regulation of
Trade.

regulating of Trades, and the better management of them, so that the benefit of them may be denied to the greater part of the People, tho' with some prejudice to a few particular Persons, hath always been allowed by the Law. But Parents which tend to the ingrossing of Trade or Manufacture, tho' of never so small Value, into one or few hands only, have always been held unreasonable and unwarrantable, as the Case of Monopolies, 11 Rep. But our case is quite another thing, for here is an Incorporation consisting of many Persons using this Trade, and there is liberty given to all others to be admitted, if they have served their Apprentisships; and tho' they have not, yet with the Corporations leave, they may be admitted.

Corporation of
Coachmen.

A Grant lately made to incorporate Coachmen, and that none should drive a Coach without Licence, held good.

Of Weavers.

Hill 43. Eliz. B. R. Taylor versus Brown, entred *Hill 41. Eliz. Ret. 450.* The King granted to the Corporation of Weavers in *London*, that none should intermeddle in their Trade unless he were of their Fraternity: The Grant was held to be good, there being a Rent reserved upon it. *Mich. 42, & 44 Eliz.* in *Hawkshead and Wards Case*, B. R.

The King granted to the City of *London*, that all Persons bringing into *London* saleable Commodities, should pay so much for Toll, this was held to be a good Grant, and yet generally speaking, it may seem to be against the Liberty of the Subject.

The case of the Taylors of *Ipswich* 11 Rep. comes not up to this; for the Restraint there was too general and against the Statute. 5 *Eliz. c. 4.*

The Attorney General against Alum, in Scac'

The Case of the Russia Company.

IN Information at the Suit of the Attorney General, the Case was, The *Russia* Company was incorporated by Letters Patent, 1 & 2 Ph. & M. and it was granted to them, That no Person not being of their Company should trade thither without their Leave, on the Penalty of forfeiting Ship and Goods. Afterwards by Act of Parliament 8 *Eliz.* these Letters Patent were confirmed, and it was further Enacted, That no Person, Subject, or other, should trade thither without leave of the Company, and the Question was, Whether or no one that was Free of the Company might trade thither without leave of the Company.

The Act of 8 *Eliz.* alters the name of the Corporation. 2. It alters the Penalty. 3. It makes an alteration in the Traders, *viz.* That none shall trade thither, Subject or Denizen, without Licence, Against separate trading. which extends to particular Persons, even of the Company, to restrain their Trading thither without Licence. The intention of the Act was to regulate the Trade, and to appropriate it to the Regulation and Government of the Company. And the Court inclined to be of this Opinion, for the great Inconvenience was the single and separate Trade of those of the Company, and not of Forreigners, who could not Trade without leave of the Company: and the Act is a mere Act of Creation, and to regulate those of the Company who trade separate, to the prejudice of the Joynt-Stock of the Company; and if it were an Act An Act of Creation. of Confirmation it would be a void Act, because the Letters Patent themselves are void, being to appropriate a Trade, which the King cannot do by Law.

C A P.

C A P. XXIII.

Dissolution of Corporation.

Where, and by what Acts or Accidents Corporations shall be dissolved and extinguished, and by what not. Dean and Chapter surrender their Possessions, yet the Corporation continues. Tho a Corporation be altered in name yet they shall enjoy their ancient Privileges. By Surrender a Corporation cannot be dissolved Quer. What amounts to a Dissolution or not. Upon Dissolution the Lands revert to the Heir of the Donor. Tho a Corporation be dissolved, yet their Grant were Good.

THE Dean and Chapter of *Norwich* by their Indenture enrolled surrender to King *Ed. 6.* all their Church and Possessions. And after the King, in the same Year, incorporates them anew; and in the same Year after Grants to them their Church and Possessions. *Per Cur.* Tho they had surrendred their Church and Possessions, yet the Corporation continues and remains the Chapter of the Bishop, as to assist him in deciding Controversies in Religion, to consent to every Grant the Bishop shall make to bind his Successor; and at first all the Possessions were the Bishops, and after a certain Portion was assigned to the Chapter, *ergo* the Chapter was before they had any Possessions. And of common Right the Bishop is Patron of all Prebends; and therefore though the Dean and Chapter part with their Possessions, yet their Corporation of necessity remains, and if the Body of a Prebend be a Mannor, and the Mannor be recovered from him by Title Paramount,

Dean and Chapter surren-
der their Pos-
sessions, yet
Corporations
continue.

mount, yet his Corporation remains, for he had *stallum in choro & vocem in capitulo*. Tho there cannot be Gardein of a Chappel, if the Chappel and all the Possessions are aliened, because there cannot be a Gardein of nothing. 5 Rep. 75. Dean and Chapter of *Norwich's Case*.

If a Corporation had Franchises and Privileges, *per Grant or Prescription*, and afterwards they are incorporated by another name, as where they were Bayliffs and Burgessees before, now they are Mayor and Commonalty, or Prior and Covent before, and now they are translated into Dean and Chapter, although in those cases the Name and Quality of their Corporation be altered and changed, and especially in case of Prior and Covent; for of Regular, which are dead Persons in Law, they are made Secular, yet the new Body shall enjoy all the Privileges, Franchises, and Hereditaments which the old Corporation had by Grant or Prescription. 4 Rep. 87. b.

Tho a Corporation be altered in name, yet they shall enjoy their ancient Privileges.

When the Hospital of St. *John in Jerusalem* was surrendred and suppressed by the Statute of 33 H. 8. and their Possession vested in the Crown by that Act, yet the Visitation of them did not cease by this, for their Corporation was not dissolved; but when they were deraigned and left their Habit, Rule and Order, by which they were visitable, then the Corporation was utterly dissolved, and the Visitation ceased. *Davies Rep.* 1. b.

By Surrender a Corporation not dissolved.

If a Corporation be made of Confreres and Sisters, and after all the Sisters are dead, all Acts and Grants made by the Confreres are void; for when the Sisters are dead, this is not a perfect Corporation. *M. 32 Eliz. B. R.*

Dissolution how or not.

But if the King make a Corporation, consisting of 12 Men, to continue for ever in Succession; and when any of them die the other may choose another in his place: if three or four of them die, yet all

all Acts made by the residue shall be sufficient ; for it is not like to the Case precedent.

It is agreed, that a Body Politick may be dissolved either by the death of the Parties incorporate, or their refusal to act, nominate and elect Officers, so that there remains not sufficient Authority by their Charter to preserve their being, this seems to be a Cesser or Dissolution.

Upon dissolution
of the Lands
revert to the
Heir of the
Donor.

Upon the dissolution of a Body Corporate, as Dean and Chapter, Mayor and Commonalty, their Land shall not Escheat, but shall revert to the Donor. For the Fee is vested in them in their politick Capacity, created by the policy of Man, and so there is a Condition in Law annexed to every such Gift or Grant, that if such Body Politick be dissolved, that the Donor or Grantor shall re-enter, for that the cause of the Gift or Grant sayleth, but no such Condition is annexed to Estate in Fee-Simple vested in any Man in his natural Capacity, unless the Donor or Feoffor reserves to him a Tenure. 1 *Inst.* 13. b. *Godb* 211. A Prescription was shewed of a discharge of Tythes in an Abbot, Prior and Covent, and that the Corporation was afterwards dissolved, because all the Monks died, and the Abbot also ; the Lands reverted, and *per Cur.* he who is now Owner of it, and holdeth the Lands shall pay Tythes ; for a Man cannot prescribe in *non decimando*. If a Rent be granted to one, and his Successors, and the Corporation be dissolved, *Per Coke* and *Warburton* Justices, the Rent shall revert to the Donor. *Godb.* 211. Dean and Chapter of *Windsor* and *Webb's* Case, and their Successors.

Dissolution by
Death.

If 200 Faggots are granted to a Master and his Confreres, or any other thing granted to a Corporation to perceive out of all the Lands of the Grantor, and after the Master and Confreres granted them over ; and after their Corporation

tion is dissolved, yet the thing granted shall not A Corporation
Escheat to the Grantor, tho it should have escheat- is dissolved
ed if it had not been granted ; so of Land or Rent. their Grants
I Rol. Abridg. 816. Southwell and Wade. are good.

Vide plus de hoc, in the case of the *Quo Warranto* against London.

C A P. XXIV.

Quo Warranto.

The nature of it. Quo Warranto brought for User and not for Abuser. What misuser is a Forfeiture of all the Liberties, and what not. Seizure by the King. Judgment against the Virginia Company in a Quo Warranto. The Answer or Plea to a Quo Warranto. Where Grant or Confirmation by Charter does not destroy Prescription. Difference between Usurping to be a Corporation, and the Franchises. If Quo Warranto be brought to dissolve a Corporation, how it shall be brought. The appearance of the major part to a Quo Warranto being Recorded is sufficient. The Case of the Quo Warranto lately brought against the City of London, and the Judgment. Trial, and Issue in a Quo Warranto, and Judgment.

TO the right understanding of the nature of What it is.
a *Quo Warranto*, we must know that it
is a Writ which lies where a Man or Bo-
dy politick claims or uses any Franchise or Liberty
against the King, as to have Waifs, Estrays, Fairs,
Markets, &c. without good Title. A *Quo War-*
ranto for Franchises is in the nature of a Writ of
Right,

The Law of Corporations.

Right, and the Defendant in it ought to make a sufficient Title against the King.

The *Quo Warranto* contains 2 things in it self.

1. A Claim. 2. An Usurpation; and the Defendant must answer to both.

A *Quo Warranto* was brought against the Warden and Burgeses of *Maydenhead*, for using of a Market, and taking a Penny for Piccage, Stallage, &c. Defendant pleads, That King *James 1.* reciting the Grant of a Market given to them by King *Henry 6.* *ulterius eis concedit quod portinales Burgeses & Comminales villæ prædictæ & Successores sui habeant imperpetuo unum mercatum, &c. cum stallagio piccagio finibus & amerciamentis & colligerent customia & thelonia de omnibus Merchandizis mercatorum & cetera quæcunque sunt infra Libertates ejusdem Villæ vend'* by force of which Patent they took, &c.

Objection was made, That it is not shewed that they were a Corporation before the said Letters Patent, or by the same Patent. As 2 *H. 7.* 13.

Resp. We have pleaded by the same name with which you charge us by the *Quo Warranto*, and that is sufficient.

Object. It is not expressed what Sum they took.

Quo Warranto
brought for
user, not for
abuser.

R. The *Quo Warranto* is not brought against them for the abuse of the Market, but for the User, and so they need not express what Sum they took. As a *Quo Warranto* was brought against the Mayor and Commonalty of *London*, for using the Liberties, viz. to be Water-bayliff from *London-bridge* to *Stains*, and to have the measuring of Coals and Onyons, and for taking Fees, and they shew their Title to them, and the general confirmation of their Liberties by *Rich. 2.* and so they justified their Usage and took Fee, and shew not the particular Quantity or Sum, and adjudged good. 3 *Fac. Page's Case*, 2 *Rel. Rep.* 155.

In this case there was a good diversity observed, where the Liberties are subordinate and depending one upon another, there the misusing or abusing of Liberty is a Forfeiture of all the Liberties, otherwise where the Liberties are several. By an abuse or misuser of a Fair, he forfeits the Court of Piepowder, because it is incident to it.

Quo Warranto was brought against the Bayliffs and Burgeses of *Barkhamstead* in Com' *Hartford*, they appeared, and Judgment *pro defectu responsi* was given of Seizure, *p. 16. Car. 2.* and they are no Corporation at this day. But in most cases the King hath upon a Fine restored them.

The Liberties of a Body-politick may be seized into the Kings hands by a *Quo Warranto*, as it was in the case of the *Virginia* Company and in the case of *New-Malton. Tr. 6. Jac.*

The King brought a *Quo Warranto* against *N.F. J.S. J.D. & alios periclitatores & plantatores pro prima Colonia in Virginia*, to know by what Warrant they claim divers Liberties. They plead an insufficient Plea, and the King demurs. The Question was, How Judgment shall be entred; for the Master and chief of the Company were left out in the *Quo Warranto*, and the Judgment was given against *N. F. J. S. and J. D. & alios periclitatores, &c.* Quest. If this bind the Corporation. *2 Rol. Rep. 455. the Virginia Companies Case.*

Quo Warranto against the Citizens of *Canterbury*, for that they claimed divers Liberties, &c. within the Palace of *Canterbury*, as to part in such a Place they justify in the City, *preterquam in Staplegate & Westgate; & quoad residuum Locorum* they disclaim. It was resolved that the disclaimer extends to *Staplegate* and *Westgate*, notwithstanding the *preterquam*, and Judgment of this part was immediately given for the King, because it was in the King's case. *1 Rol. Rep. 482.*

The

The natural answer to a *Quo Warranto* is to claim or disclaim, and yet a Man may vouch in a *Quo Warranto*.

Of what things
a *Quo Warranto*
so lies not.

A *Quo Warranto* lies not of the Claim of a thing which cannot be claimed, as to claim Felons Goods, or to pardon Felons, for these are things which lie only in point of Charter. *Godb* 92, 93.

In a *Quo Warranto* against the Mayor, Bayliffs and Jurats of *Maidstone* it was ordered by the Court that they should have Day to plead until a Fortnight after *Trinity Term*, and they had not pleaded accordingly, whereupon Judgment was entred upon the Roll, and the Writ of Seisin awarded, and Execution thereon, but the Judgment not filed. All Franchises in *England* are against common Right: and *Noy* cited Sir *John Welling's Case*, where in a *Quo Warranto* the Defendant had a day to plead, and he failed to plead at the day, and the Judgment was not filed, yet he could not be relieved. *Poph.* 180. But 1 *Cro. Car.* a Judgment was entred by disclaimer, with consent of the Parties, *virtute vel pretextu literarum patentium geren' dat' anno decimo septimo Jac. Reg.*; but these words *geren' dat'*, were in the Margin, the Clark omitted them in the engrossing the Judgment, and the Record was amended, tho in the Kings Case, and this in another Term, and that this disclaimer should not extend further than to Liberties granted by the Charter of 17 *Jac.* and not to Liberties granted to former Charters.

Amendment.

Grant or Confirmation by
Charter does
not destroy such
a prescription.

A Court being by Prescription, is not taken away by Grants and Confirmations of Kings, but they may use their Charters as Confirmations or as Grants, or may claim those Liberties by Prescription, notwithstanding such Charters: for as *Fleming* said, Every Corporation useth in every Kings time to take a new Confirmation of their Liberties, or in every allowance of them, else they
be

be not justifiable. *Cro. Jac.* 313. in *Goodson* and *Duffield's* Case.

If a *Quo Warranto* be brought for usurping a Corporation it must be brought against particular Persons, because it goes in disaffirmance of the Corporation, and Judgment shall be given, that they be ousted of the Corporation; but if it be for Liberties claimed by a Corporation, it must be brought against them as a Corporation, *Hales's* Common-place Book not in print. *Case, fol.* 168.

Pl. 7.

If a *Quo Warranto* be brought to dissolve a Corporation, the Writ ought to be brought against particular Persons, for the Writ supposeth that it is no Corporation; otherwise when the Attorney questions them as Inhabitants of a Village, then they ought to enable themselves, and shew themselves a Corporation, and also prove it.

If Quo Warranto be brought to dissolve a Corporation, how it must be brought.

Note, Si Quo Warranto soit port pur usurper de Corporation, serra port vers particular Persons, quia in disaffirmance del Corporacion, & Judgmet serra don' que serra ouste; mes si Quo Warranto soit port pur Liberties claimed per Corporation serra port versus Corporation. Hales's common-place Book, in Lincolns-Inn Library.

Quo Warranto was brought against the Bailiffs, Aldermen, Burgesses, and Commonalty of *Tarmouth*, they did appear by Warrant of Attorney, and one of the Bailiffs named in the Warrant did not appear nor agree to it. *Per Cur.* The Appearance of the major, or greatest part being recorded, was sufficient: and tho the Warrant of Attorney was under another Seal than their common Seal, yet being under Seal, and recorded, it cannot be annulled. *Gedh.* 439.

Trial in a Quo Warranto.

QUO Warranto was brought against divers Persons in the City of *Worcester*, why they claimed to be Aldermen of the said Corporation. The Cause came to be tried at the Bar, and a Challenge was made to the Jury in behalf of the Defendants, for that the Jury were not Freeholders. *Per Cur.* The Statute requiring the Jury to have so much Freehold doth not extend to such places; for if so, there might be a failure of Justice for want of Jurymen so qualified. 1 *Ventr.* 366.

Vide Raym. 485.

Quo Warranto against the Town of *Farnham* in *Surrey*, for using a Fair and a Market, and taking Toll; and Issue being taken, whether they had Toll by Prescription or not, it was found for the Defendant; it was moved in arrest of Judgment, that there had been a discontinuance, because there was no Issue Joined as to the other Liberties claimed; and this Action is not aided by the Statute of *Jeofayles quod fuit concessum*. But chief Baron *Hales* said they came too soon to urge that, because Judgment was not yet given. And before Judgment there is no discontinuance in the King's Case; for the Attorney General may yet proceed by the King's Prerogative, to take Issue upon the rest, or enter a *nolle prosequi*; and if he will not proceed the Court may make a Rule upon him *ad Replicandum*, and so there may be a special Entry made of it.

Judgment.

Judgment.

THE Judgment against the Corporation of London was in Temp. Car. 2. upon the Quo Warranto.

“ Consideratum est quod Libertat’ Privileg’ &
 “ Franches’ præd. fore de seipsis unum corpus Cor-
 “ porat’ & Politic’ in re facto & nomine per no-
 “ men Majoris Communitat’ & civium Civitat’
 “ Lond’ ac per idem nomen placitare & implaci-
 “ tari respondere & responderi per eosdem Majo-
 “ rem & Communitat’ ac cives Civitat’ Lond’
 “ præd’ superius clamat’ capiantur & seisiuntur in
 “ man’ Dom’ Regis & quod prefat’ Major &
 “ Communitas ac cives Lond’ Civitat’ præd’ ca-
 “ piant’ ad satisfac’ dicto Dom’ Regi de fine
 “ suo pro Usurpatione Libertat’ Privileg’ & Fran-
 “ ches’ præd’.

Mich. 33 Car. 2. in B. R. Rot. 137.

Sir Robert Sawyer, Knt. his Majesty's Attorney General, against the Lord Mayor and Citizens of *London*.

The Information in Nature of a Quo Warranto sets forth:

THAT the Mayor and Commonalty and Citizens of the City of *London* by the space of a Month then last past and more, used and yet do claim to have and use without any lawful Warrant or legal Grant within the City of *London* aforesaid, and the Liberties and Privileges of the same City, the Liberties and Privileges following,

1. To be of themselves a Body Corporate and Politick by the Name of Mayor and Commonalty and Citizens of the City of *London*.

2. To have Sheriffs *Civitat' & Com' London' & Com. Midd'* and to name, elect, make and constitute them.

3. That the Mayor and Aldermen of the said City should be Justices of the Peace, and hold Sessions of the Peace.

All which Liberties, Privileges and Franchises, the said Mayor and Commonalty and Citizens of *London* upon the King did by the space aforesaid usurp, and yet do usurp.

The

The Mayor and Commonalty and Citizens they appear by their Attorney.

‘ I. As to their being a Body Politick and Corporate, they prescribe and say,

‘ I. That the City of *London* is, and time out of mind hath been an Ancient City, and that the Citizens of that City are, and by all that time have been a Body Corporate and Politick, by the Name of Mayor and Commonalty and Citizens of the City of *London*.

‘ That in *Magna Charta de Libertatib’ Angliæ*, in the Parliament holden 9 *Hen. 3.* it was enacted, *Quod Civitas London’ habeat omnes Libertates suas antiquas & Consuetudines suas.*

‘ That in the Parliament 1 *E. 3.* that King by his Charter *De assensu Prelatorum Comitum Baronum & totius Communitatis Regni sui*, and by Authority of the same Parliament, having recited that the same Citizens at the time of the making *Magna Charta*, and also in the time of *Edward the Confessor*, *William the Conqueror*, and other his Progenitors, had divers Liberties and Customs, Wills and Grants by Authority aforesaid, That the same Citizens shall have their Liberties according to *Magna Charta*. And that for any personal Trespals *Alicujus Ministri ejusdem Civitatis Libertatis Civitas illius in manus ejusdem Domini Regis Ed. 3. vel hæred’ suorum non caperetur, sed hujusmodi Minister’ prout qualitatem transgressionis puniretur.*

‘ They Plead also;

‘ That in the Parliament holden 7 *R. 2.* *Omnes Consuetudines Libertates Franchesia & Privilegia Civitat’ præd’ tunc Civis Civitat’ illius, & eorum*
X 3 ‘ Succes-

‘*Successoribus licet usi non fuerint vel abusi fuerint*
 ‘*Auctoritate ejusdem Parliamenti ratificat’ fuerint.*

‘Then they plead the Confirmation of several
 ‘late Kings by their Charters: as of

‘King *Henry IV.* by his Charter dated
 ‘26 Oct. 23 *H. 6.*

‘King *Edward IV.* by his Charter dated
 ‘9 Nov. 2 *E. 4.*

‘King *Henry VII.* by his Charter dated
 ‘28 July, 20 *H. 7.*

‘King *James I.* by his Charter dated 25 Sept.
 ‘6 Jac. 1.

‘King *Charles I.* by his Charter dated 18 Oct.
 ‘14 Car. 1.

‘King *Charles II.* by his Charter dated 24 Jan.
 ‘15 Car. 2.

‘*Ac eo Warranto* they claim to be and are a
 ‘Body Politick, &c. and Traverse their Usurp-
 ‘ing upon the King,

‘II. As to the Having, Electing, Making and
 ‘Constituting Sheriffs of *London* and *Middlesex*
 ‘they Plead,

‘That they are, and time out of mind were a
 ‘Body Politick and Corporate, as well by the
 ‘Name of Mayor and Commonalty and Citizens,
 ‘*quam per nomen Civium London.* And that King
 ‘*John* by his Letters Patents under the Great Seal
 ‘of *England* in Court produced, dated 5 *Julii*,
 ‘*Anno Regni sui primo*, granted to the Citizens of
 ‘*London*, That they should have the Electing,
 ‘making and Constituting of Sheriffs of *London* and
 ‘*Middlesex Imperpetuum.*

III. As

‘ III. As to the Mayor’s and Aldermen’s being
 ‘ Justices of the Peace, and holding Sessions, they
 ‘ Plead,

‘ That the City is, and time out of mind was, an
 ‘ Ancient City and County, and the Citizens a
 ‘ Body Politick.

‘ That King *Charles I.* by his Letters Patents,
 ‘ dated 18 Oct. 14 Car. 1. Granted to the Mayor
 ‘ and Commonalty and Citizens of the City of
 ‘ *London*, such of them as had been Mayors should
 ‘ be Justices of the Peace, and should hold Sessions.
 ‘ *Et eo Warranto* they claim to be Justices, and held
 ‘ Sessions.

‘ To this Plea the Attorney-General replies,

‘ And as to the Mayor and Commonalty and Ci-
 ‘ tizens of *London* being a Body Politick and Cor-
 ‘ porate,

‘ First takes issue, That they never were a Body
 ‘ Corporate, and for this puts himself upon the
 ‘ Country : And then goes over and pleads,

‘ That the Mayor, Commonalty and Citizens as-
 ‘ suming upon themselves to be a Body Politick and
 ‘ Corporate, and by reason thereof to have Power
 ‘ and Authority to convocate and assemble, and
 ‘ make Laws and Ordinances not contrary to the
 ‘ Laws of the Kingdom, for the better Government
 ‘ of the City and Citizens, and for preserving the
 ‘ King’s Peace, under pretext thereof, but respect-
 ‘ ing only their private Gains and Profit, and a-
 ‘ gainst the Trust in a Body Corporate, by the
 ‘ Laws of this Kingdom reposed, assumed an un-
 ‘ lawful and unjust Authority to levy Money upon
 ‘ the King’s Subjects to their own proper use, by
 ‘ colour of Laws and Ordinances by them *de facto*
 ‘ ordained and established. And in Prosecution and
 ‘ Execution of such illegal and unjust Power and

' Authority by them usurp'd 17 Sept. 26 Car. 2.
 ' in their Common Council assembled, made, con-
 ' stituted and published a certain Law by them *de*
 ' *facto*, Enacted for the levying of several Sums of
 ' Money of all the King's Subjects coming to the
 ' Publick Markets within the City to sell their Pro-
 ' visions, *viz.* Of every Person for every Load of
 ' Provisions into any publick Market within the said
 ' City brought to sell, 2 *d.* per day; For every
 ' Doffer of Provisions 6 *d.* per day; For every Cart
 ' Load, not drawn with more than three Horses,
 ' 4 *d.* per day: And that these Sums of Money
 ' should be paid to the use of the Mayor, Commonalty
 ' and Citizens. And if any refuse to pay, then to
 ' be removed from his Place in the Market.

' And that by colour of this Law the Mayor,
 ' Commonalty and Citizens for their own private
 ' Gain had illegally by the space of seven Years next
 ' after the making of this Ordinance, received di-
 ' vers great Sums of Money, in all amounting to
 ' 5000 *l.* per Annum, in Oppression of the King's
 ' Subjects.

' And further, That whereas a Session of Par-
 ' liament was holden by Prorogation, and conti-
 ' nued to the 10th of *January* 32 Car. 2. and then
 ' Prorogued to the 20th of *January* then next,

' The Mayor, Commonalty and Citizens 13 *Jan.*
 ' 32 Car. 2. in their Common-Council assembled
 ' unlawfully, maliciously, advisedly and seditiously,
 ' and without any lawful Authority, assumed upon
 ' themselves, *Ad censendum & judicandum dictum*
 ' *Dominum Regem, & Prorogationem Parliamenti*
 ' *per Dominum Regem sic fact.* And then and
 ' there in Common-Council assembled, did give
 ' their Votes and Orders, That a certain Petition
 ' under the Name of the Mayor, Aldermen and
 ' Commons in the City of *London* in Common-
 ' Coun-

‘ Council assembled, to the King, should be exhibited; in which Petition was contained,

‘ That by the Prorogation the Prosecution of the Publick Justice of the Kingdom, and the making necessary Provision for the King, and of his Protestant Subjects had received interruption.

‘ And the Mayor and Commonalty and Citizens in the same Council assembled, did unlawfully, maliciously, advisedly and seditiously, and with Intention that the said Petition should be dispersed amongst the King’s Subjects, to induce an Opinion in them, that the said King by Proroguing the Parliament had obstructed the publick Justice, and to incite the Kings Subjects to hatred of the King’s Person and Government, and to disturb the Peace of the Kingdom, did order that the said Petition should be printed; and the same was printed accordingly to the Intent and Purpose aforesaid.

‘ By which the Mayor, Commonalty and Citizens aforesaid, the Privilege, Liberty and Franchise of being a Body Politick and Corporate did forfeit, and afterwards by the time in the Information, that Liberty and Franchise of being a Body Politick, did usurp upon the King. *Et hoc, &c.*

‘ As to the other two Pleas (*viz.*) the making and having Sheriffs and Justices of the Peace, the Attorney General Imparles to *Mich.* next.

‘ The Mayor, Commonalty and Citizens as to the Plea of the Attorney General, pleaded in assigning a Forfeiture of their being a Body Politick and Corporate.

‘ *Protestando*, That those Pleas by the Attorney pleaded and the matter in the same contained, are insufficient in the Law to forejudge or exclude the Mayor and Commonalty and Citizens from being a Corporation.

‘ *Prote-*

‘ *Protestando etiam*, That no Act or Deed, or
 ‘ By-Law made by the Mayor, Aldermen and
 ‘ Common-Council, is the Act or Deed of the Body
 ‘ Corporate.

‘ *Protestando etiam*, That the Mayor and Com-
 ‘ monalty and Citizens of *London* never took upon
 ‘ them any unlawful or unjust Authority to tax the
 ‘ King’s Subjects for their own private Gain, or did
 ‘ ever levy or exact from the King’s Subjects com-
 ‘ ming to Markets such Yearly Sums as in the Re-
 ‘ plication are Alledged. For Plea say,

‘ That *London* is the Metropolis of *England*, and
 ‘ very populous, and *Celeberrimum Emporium totius*
 ‘ *Europæ*.

‘ That there are, and time out of mind have
 ‘ been, divers publick Markets for Provision and
 ‘ Merchandize within the said City to be sold.

‘ That the Mayor and Commonalty and Citizens
 ‘ have been time out of mind, and yet are, seized
 ‘ of these Markets in Fee, and by all the said time
 ‘ at their own Costs and Expences have provided
 ‘ and have accustomed, and ought to provide at
 ‘ their own Costs Places for the holding of the
 ‘ said Markets and Stalls, and Standing, and other
 ‘ Accommodations for Persons bringing Provisions
 ‘ and Merchandizes to the said Markets, and Super-
 ‘ visors and other Officers for the better preserving
 ‘ and ordering of the said Markets, and of the
 ‘ great concourse of People coming to the same;
 ‘ and for sustaining and supporting of the said
 ‘ Costs and Expences, by all the time aforesaid
 ‘ have had, and ought to have, reasonable Tolls,
 ‘ Rates, or Sums of Money of Persons coming to
 ‘ the said Markets for their Stalls, Standings, and
 ‘ other Accommodations by them for the better ex-
 ‘ posing their Commodities, had and enjoyed.

‘ They

‘ They further say, That the Citizens and Free-
‘ men of *London* are very numerous (*viz.*) 50000
‘ and more.

‘ That within the said City there hath been, time
‘ out of mind a Common-Council assembled as
‘ often as necessary, consisting of the Mayor, Al-
‘ dermen and of certain of the Citizens not exceeding
‘ 250 Persons thereto annually elected, called the
‘ Commons of the said City.

‘ That there is a Custom within the said City for
‘ the Mayor, Aldermen and Common-Council to
‘ make By-Laws and Ordinances for the Regula-
‘ tion and Government of the Publick Markets
‘ within the City.

‘ That these Liberties and Customs of the City
‘ were confirmed by *Magna Charta*, and other
‘ Statutes in the Plea above mentioned.

‘ That by reason of burning of the City in *Septem-*
‘ *ber* 1666. and the Alterations in the Market-
‘ Houses and Places thereby occasion’d, for the
‘ Establishing and Re-settling the Markets within
‘ the City, 17 *Sept.* 26 *Car.* 2. the then Mayor,
‘ Aldermen and Commons in Common Council
‘ assembled, according to the Custom, for the better
‘ Regulation of the said Market, did make and pub-
‘ lish an Ordinance, entituled, *An Act for the*
‘ *Settlement and well Ordering the Publick Markets*
‘ *within the City of London*: By which said Ordi-
‘ nance reciting that for the Accommodation of the
‘ Market People with Stalls, Shelters, and other
‘ Necessaries for standing in the Markets, and for
‘ the Amendment, paving and cleansing the Mar-
‘ ket-Places, and for the support and defraying the
‘ incident Charges thereof, there have been always
‘ certain reasonable Rates and Duties paid for the
‘ same. And to the Intent that the said Rates may
‘ be ascertain’d and made publick to all Market-
‘ People, and the Collectors restrained from exa-
‘ cting

‘ Etting, it was Enacted and Ordained by the said
 ‘ Common-Council, That Rates and Sums in the
 ‘ Replication should be paid to the Use of the
 ‘ Mayor and Commonalty and Citizens, or upon
 ‘ refusal, to be removed out of the Market. And
 ‘ they averr, that these are all the Rates or Duties
 ‘ paid, and were reasonable Sums to be paid : and
 ‘ these they have demanded and received for the Use
 ‘ and Purpose aforesaid, as was lawful for them to
 ‘ do.

‘ As to the other Matter alledged by the Attorney
 ‘ General in assigning the forfeiture, they say,

‘ That within this Kingdom, (*viz.*) at the Parish
 ‘ of *St. Michael Bassishaw, London*, there was an
 ‘ execrable Plot and Conspiracy prosecuted by Pa-
 ‘ pists to destroy the King and to subvert the an-
 ‘ cient Government, and suppress the true Religion
 ‘ in this Kingdom established.

‘ That *Sir Edmundbury G.* took Examinations of
 ‘ Witneses and Informations of the same, and also
 ‘ of the burning of *London* by Papists.

‘ That divers of these Conspirators had lain in
 ‘ wait for him and murdered him, to the Intent to
 ‘ suppress his Examinations, and to deter other
 ‘ Magistrates from acting in the Discovery.

‘ That *Green* and others were tried and hang’d
 ‘ for this Murther.

‘ That *Coleman* and others were also tried and
 ‘ executed for the same Conspiracy.

‘ That *William Lord Powis, Lord Arundel* of
 ‘ *Warder, Lord Petre, Lord Bellasis* were impeach-
 ‘ ed by the Commons in Parliament of High Trea-
 ‘ son for the same Conspiracies, and sent to the
 ‘ *Tower*.

‘ That the King in his Speech to that Parliament
 ‘ had recommended to them the further Pursuit and
 ‘ Examination of that Conspiracy ; declaring that
 ‘ he thought not himself nor them safe till that mat-

‘ ter

ter were gone through with : and therefore that it
 was necessary that the said Lords in the *Tower*
 should be brought to their Trials that Justice
 might be done. And the Parliament having made
 an Address to the King, wherein both Lords and
 Commons declared their being deeply sensible of
 the sad Condition of the Realm, occasion'd chiefly
 by the Conspiracies of a Popish Party, who had
 plotted and intended the Destruction of the King
 and subversion of the Government and Religion of
 the Kingdom: And thereupon a solemn Fast kept
 pursuant to the King's Proclamation, grounded
 upon the said Address, and divers Bills prepared
 to be passed into Laws for Preservation of his Pro-
 testant Subjects.

These Impeachments and Bills being thus de-
 pending, and the Lords in the *Tower* not Tried,
 the Parliament was upon the 10th of *January*
 Prorogu'd, as the Attorney General above in his
 Replication hath alledged, by reason whereof the
 Citizens and Inhabitants of the said City, being
 faithful Subjects to the King, were much disqui-
 eted with the Sense and Apprehensions of the
 Dangers threatening the Person of the King, his
 Government and Realm, by reason of the Con-
 spiracies aforesaid, as is by both King and Parlia-
 ment affirmed and declared ; and conceiving no
 better means to prevent than by the sitting of the
 Parliament ; and having received a Petition from
 divers faithful Subjects, Citizens of *London*, to the
 same effect. And it being lawful to Petition, the
 Mayor, Sir *Patience Ward*, and the Aldermen and
 Commons in Common-Council assembled, for the
 Preservation of the King and his Government,
 did cause to be written the Petition in the Repli-
 cation mention'd, which is set forth *in hæc verba* ;
 and did order that after the same was presented to
 the King it should be printed, for the satisfaction
 of

The Law of Corporations.

‘ of the troubled Minds of the said Citizens; and
 ‘ traverse the writing or making any other Petition,
 ‘ or making this to any other End or Intent than they
 ‘ have Pleaded.

‘ The Attorney General, as to the Plea of the
 ‘ Mayor and Commonalty and Citizens, pleaded
 ‘ to the making and publishing the Ordinance about
 ‘ the Markets,

‘ *Protestando*, That the Mayor and Commonalty
 ‘ and Citizens were seized of the Markets, nor at
 ‘ their Charges provided Stalls and Necessaries, or
 ‘ Market-Places.

‘ *Protestando etiam*, That the said Rates and Sums
 ‘ were not reasonable,

‘ For Plea saith, That by a Statute made 22 C. 2.
 ‘ it was enacted that Places for Markets should be
 ‘ set out, and 2 *d.* per Chaldron upon Coals for
 ‘ the Charge of that and many other things were
 ‘ given; and that they received a great Sum out of
 ‘ that Duty for the Purpose aforesaid: and yet for
 ‘ their own private Lucre took the Money by the
 ‘ Ordinance,

‘ And traverseth that the Mayor and Common-
 ‘ nalty and Citizens time out of mind, *habuerunt &*
 ‘ *habere consueverunt tolmeta ratas sive denariorum*
 ‘ *summas per ipsos Majorem Communitatem & Ci-*
 ‘ *ves superius supposit. per prefatam Legem sive Or-*
 ‘ *dinationem prædict’ assess’ & in certitudinem re-*
 ‘ *duct’ prout per placitum suum superius rejungendo*
 ‘ *placitat’ supponitur.*

‘ And to the Plea of the Mayor and Common-
 ‘ nalty and Citizens pleaded to the residue of the
 ‘ Attorney’s Matter assign’d for a Forfeiture as
 ‘ aforesaid,

‘ The

‘ The Attorney *Protestando*, That the aforesaid
 ‘ Prorogation of Parliament was for Urgent Causes
 ‘ concerning the Good of the Kingdom, and there-
 ‘ by the Prosecution of Publick Justice not in-
 ‘ terrupted.

‘ And demurs to the said Plea of the Mayor and
 ‘ Commonalty and Citizens, by them pleaded as to
 ‘ the Petition.

Rebutter.

‘ The Mayor and Commonalty and Citizens,
 ‘ as to the making and publishing the Ordinance
 ‘ for the Payment of Monies by those that come to
 ‘ the said Markets, say as before,

‘ That the Mayor and Commonalty and Citi-
 ‘ zens have time out of mind, had, and accustomed
 ‘ to have reasonable Tolls, Rates, or Sums of Mo-
 ‘ ney of all Persons coming to these Markets with
 ‘ Victuals and Provisions there to be sold, for Stalls,
 ‘ Standing, and other Accommodations by them
 ‘ had, for exposing their Victuals and Provisions to
 ‘ Sale, and of this they put themselves upon the
 ‘ Country, &c.

‘ To this Mr. Attorney demurs.

‘ And as to the Plea by the Mayor and Commoi-
 ‘ nalty and Citizens pleaded to the residue of the
 ‘ matter by the Attorney General assigned for For-
 ‘ feiture, they join in Demurrer.

*Memorandum, That when the Demurrer in this
 Case was join'd, (viz.) Mich 34 Car. 2.
 Mr. Serjeant Pemberton was Chief Justice of
 the King's Bench. But before Hillary-Term,
 that it came to be argued, he was removed
 and made Chief Justice of the Common Bench:
 And Sir Edmund Saunders, who had been
 Council for the King, in drawing and advising
 the Pleadings, was made Chief Justice of the
 King's Bench. The*

The Opinion of the Court.

Saunders, C. J. Jones, Raymond and Withens.

I. **T**HAT a Corporation Aggregate might be seized: That the Stat. 28 *Ed. 3. c. 10.* is exprefs, That the Franchifes and Liberties of the City upon fuch Defaults fhall be taken into the King's Hands. And that Bodies Politick may offend and be pardoned appears by the general Article of Pardon, 12 *Car. 2.* whereby Corporations are pardoned all Crimes and Offences, and the Act for regulating Corporations, 13 *Car. 2.* which provides that no Corporation fhall be avoided for any thing by them mifdone or omitted to be done; fhews alfo, That their Charters may be avoided for things by them mifdone or omitted to be done.

II. That the exacting and taking Money by the pretended By-Law was Extortion, and a Forfeiture of the Franchife of being a Corporation.

III. That the Petition was Scandalous and Libellous, and the making and publishing it a Forfeiture.

IV. That the Act of the Common-Council was the Act of the Corporation.

V. That the Matter fet forth in the Record did not excufe or avoid thofe Forfeitures fet forth in the Replication.

VI. That

VI. That the Information was well founded, and the Court gave Judgment as aforesaid. But respited the Entry till the King's Pleasure were known.

Accordingly, after Entry made by the Attorney General, that as to the Issue to be tried by the Country, as to the claiming to have and constitute Sheriffs, as to having the Mayor and Aldermen to be Justices of the Peace and to hold Sessions, *Quod ipse pro Dom^o Rege ulterius non vult prosegui.* And Judgment was as to that *eant inde sine die salvo jure Regis si al. &c.*

C A P. XXV.

What shall amount to a Forfeiture.

Corporation seised for notorious Riot. Dr. Lambs Case. Riot and Murder. Cinque-Ports for not obeying a Certiorari. Misuser of a Franchise a Forfeiture. Where many Persons are concerned in point of Charge or Discharge, how the King may sue. Prerogative in pleading. In two Cases Liberties may be seized by award of the Court. Where Judgment of Ouster shall be entred. Where Seizure. Several sorts of Seizures. The way to take off the King's hands. Whatsoever is contrary to the Duty and Trust of a Member is a Forfeiture. Mandamus to choose an Alderman. What miscarriages are a cause of Forfeiture.

For Riots.

IN 21 H. 6. a Presentment was made before Fortescue, against the Town of *Norwich*, that there was a great Riot in *Norwich*, and one *Gladman* took upon him to be King, and went with a Crown of Paper in a riotous manner to the Prior of *Norwich*; and altho it appears not on the Roll *quid inde venit*, yet per Rot. Pat. 27 H. 6. Membr. 13. their Liberties for that cause were seised and regranted.

Mich. 18 Edw. 3. Rot. 132. An Indictment of a Town in *Devonshire*, for suffering an Assembly, as it were, to hold Assizes in mockery of Justice.

P. 18. Car. 1. Information was brought against the Mayor and Commonalty of *London*, whereas they were incorporated by that name, and it was a walled City, and recites the Statute of 2 *Edw. 4.* That the Mayor for the time being, and all who

who have been Mayors, should be Justices of Peace within the City, and that the Sheriffs are made amongst themselves, and Coroners appointed by themselves, and that by Law they ought to suppress riotous and unlawful Assemblies. Notwithstanding in June 4 *Caroli*, in the day time, one *John Lamb* alias Doctor *Lamb*, was slain in a Tumult, and none of the Offenders taken, nor any Person known nor indicted for that Felony. And upon this Information the Mayor and Commonalty appeared and acknowledged their Offence, and *posuerunt se in gratiam Curie*, for which they were amerced 1500 Marks: for it was conceived to be an Offence at the Common Law to suffer such a Crime to be committed in a walled Town *tempore diurno*, and none of the Offenders to be known or or indicted. Riot and Murder.

A *Certiorari* was awarded to the Mayor of *Hytb* and the Jurats there being one of the *Cinque-ports*, to remove an Indictment of Felony, *viz.* Burglary, against one *T.* supposed to be committed there. The Writ was not returned upon pretence of a Privilege, or Liberty belonging to the *Cinque-Ports*, that the Kings Writ out of any of his Courts shall not be awarded unto them, but ought to be directed to the Lord Warden of the *Cinque-Ports*, who ought to make Warrant to them to execute it; whereupon an *alias Certiorari* was awarded and delivered to the Mayor and Jurats in Court, upon Oath made that they said they would not return it, and they imprisoned the Messenger that brought it. The Attorney-General was ordered to exhibit an Information against them.

A like case was, A *Certiorari* was 8 *Car.* 1. *Certiorari* prayed to be awarded to the Mayor of *Dover*, being within the *Cinque-Ports*, to remove an Indictment of Felony against one *D.* who was indicted there of Buggery. *Per Cur.* This shall not be directed

rected to the Lord Warden of the Cinque-Ports, but shall be immediately directed to the Justices before whom the Indictment was; for they held Plea of it as Justices of the Peace, by virtue of their Commissions, and not by their ancient Charters or Prescription, which was awarded accordingly.

Inter petitiones in Parliament' temps. Ed. 1. Quia homines de Southampt. verberaverunt & vulneraverunt Gilbert. Canon qui exquebatur preceptum Regis in dicta villa pro transgressione villæ villa capta fuit in manus Regis & finem fecerunt & firmam suam exaltaverunt ad 20 l. per Annum.

13 Ed. 1. Rot. fin. memb. 10. pro civibus Norwici restitutione post Civitat' capt. in manus Regis & combustionem Ecclesie ib. ibid.

Misuser.

A Misuser of a Franchise is a forfeiture of that Franchise. Abbot of St. Albans Case, 8 Hen. 4 18. The King seized the Franchise into his Hands, because the Abbot who had the Goal would not give Pledges to make Deliverance, and for detaining Prisoners a long time without making lawful Deliverance: And tho such Franchises are enjoyed by Persons in a corporate Capacity; it was a Question (a strange one) whether a Corporation can be forfeited, tho the Recorder challenged any Man to shew a Precedent where ever there was a Forfeiture of a Corporation, or a Judgment given against a Corporation to forfeit it.

Now Seisures of a Corporation were only until Fines were paid to the King, but destroyed not the Corporation.

Where many Persons are concerned in point of Charge and Discharge, how the King may sue.

Where many Persons are jointly concerned in Charge or Discharge, and the King hath cause of Suit against them, he may sue them either by naming some particular Persons with a general reference to others, as & *alios Inhabitantes*.

By Information of *Quo Warranto* the King may go upon the Title, and take Advantage of any defect

defect therein, or of the pleading thereof, and may also assign breaches for a Forfeiture, as is held in the case of *Maydenhead-bridge*, and the King may plead several Pleas, and take several Issues, and demur to part, as he shall be advised.

Prerogative in pleading.

Liberties may be seized into the Kings hands by award of the Court, or put into the King's hands, and that in two Cases principally.

In two Cases Liberties may be seized by award of the Court.

1. Where the Defendants are summoned to appear at the King's Suit, and make Default.

2. Where a Contempt appears upon Record in returning or executing the King's Process.

Brigs's Case 2 Rol. 46. In a *Quo Warranto* the Defendant appeared not at the day, the Liberties were seised.

Where it clearly appears to the Court, that where a Liberty is usurped by Wrong, and upon no Title, either by the King's Grant or otherwise, there only Judgment of *Ouster* shall be entred; but where it appears that the King or his Ancestors have once granted a Liberty, and the Liberty is misued, judgment of Seizure into the King's hands shall be given.

Where judgment of Ouster shall be entred.

Where seizure.

In all cases of Disclaimer Judgment only of *Ouster* shall be given.

There are other Seizures which are by Process, by Commission of Enquiry, upon Inquisition found, or upon Presentment, such are always for Forfeitures on Faults found in breaches of Condition annexed by Law.

Several sorts of Seizures.

In these cases of Seizure for Forfeitures, no Court, or the Lord of a Liberty, whether politick or natural, can admit to a Fine; neither is there any other way to take off the King's hands, but by direct traverse of the Fact, if the Fact found be not true; or by demurrer, if the Fact found be not in Law a sufficient cause of Forfeiture.

The way to take off the Kings hands.

Whatsoever is contrary to the Duty and Trust of a Member amounts to a Forfeiture, as to him; and what any Member may forfeit, every Member may; and the same Act which will amount to a Forfeiture of every Member separately considered, if done jointly by all the Members will have the same effect.

Mandamus to choose an Alderman.

Where an Alderman is dead, the King may send his *Mandamus* to choose another, as was done in the case of *Launceston*, *Pasch.* 8 Car. 1. 23.

If they yield not obedience they may be fined.

In case the Corporation cannot do justice in punishing and displacing the Offender, either because the Majority are Offenders, or favouring or abetting the Offenders, there being a failure of Justice in the Franchise which the Law will not permit; by judgment of the Law the City or Village shall be restored to the Government or Jurisdiction of the common Law, by the seizure of Franchise into the Kings hands.

Failure of Justice, and the not suppressing notorious Riots and Tumults, have been adjudged good causes of Forfeitures of Liberties, and the Plea of non-ability to suppress them disallowed, as an excuse as to the point of Forfeitures.

What miscarriages are a cause of Forfeiture.

It is agreed that every personal miscarriage of the Ministers of a Corporation was never any cause of Forfeiture; but it must be miscarriages of Omission or Commission, which amounted to a misgovernment in the Corporation.

M. 27 Car. 2. The case of the Mayor of *Wycomb*, upon Complaint in this Court to the Lord Chief Justice *Hales*, of his refusal to sign the poors Rates; he publickly declared to him, that if he persisted in his obstinacy, a *Quo Warranto* might be brought to seize the Franchise.

C A P. XXVI.

What are good and sufficient Causes to disfranchise or turn out a Citizen, Freeman, or Burgeſs of any City or Burrough incorporate, and to diſcharge him of his Liberty or Freedom. So to remove a Recorder, Town-Clerk, &c. Words of Contempt contra bonos mores. Endeavour and no Act not a good Cause. Common Drunkard a good Cause to remove. Old Age. Opprobrious words againſt the Corporation. A Perſon infamous. How, and by what means a Man is to be disfranchiſed. Suppoſe they return a ſufficient Cause, and the Cause be falſe. Where a Perſon may be removed without Cause.

THE cauſe of diſfranchiſement ought to be founded upon an Act which is againſt the Duty of a Citizen or Burgeſs, and to the prejudice of the publick Weal of the City or Burrough whereof he is Citizen or Burgeſs, and againſt his Oath, which he took when he was ſworn a Freeman of the City or Burrough; for the one ſhall not be charged in any Court Judicial for the breach of a general Oath which he took when he became Officer, Miniſter, Citizen or Burgeſs, &c. yet if the Act which he did be againſt the ſaid Duty and Truſt of his Freedom, and to the prejudice of the City or Burrough, and alſo againſt his Oath, this much enforceth the cauſe of his removal, and it is a condition in Law, tacitly annexed to his Freedom or Liberty, which if he break he may be diſfranchiſed. But words of Contempt, *contra bonos mores*, tho ſpoken againſt the chief Officer or his Brethren, are good cauſes to puniſh him, and to

Words of Contempt *contra bonos mores*.

Y 4

commit

commit him till he find Surety for his good Behaviour, but not to disfranchise him.

So if one intend or endeavour of himself, or conspire with others to do a thing against the Duty or Trust of his Freedom, and to the prejudice of the publick Weal of the City or Burrough, but does not execute any thing, this is a good cause to punish him as aforesaid, but not to disfranchise him, and the reason is, When a Man is a Freeman of a City or Burrough, he hath a Freehold in his freedom for his Life, and with others in their politick Capacity had Inheritance in the Lands of the said Corporation, and interest in their Goods; and peradventure this concerns his Trade and means of Living and Credit, and therefore endeavour is not sufficient without some Act done by him. *1 Rep. James Bagg's Case.*

Endeavours
and not Act.

Common Drunkard.

If an Alderman be a common Drunkard, this is a good cause to remove him from his place; for a common Drunkard is not fit for Government. *Tr. 14 Jac. B. R. Taylor.*

Old-age.

If an Alderman comes to the Age of 70 Years, this is no cause to remove him; for some Men at that Age have good Parts and Understanding. *Hazards case, an Alderman of Gloucester. 2 Rol. Abridg. 476.*

Opprobrious
words against
the Corporation.

Upon an *Habeas Corpus* to the Mayor of London, a Custom was returned to disfranchise and commit a Freeman for speaking opprobrious words of an Aldermen. The Court said they might Fine in such a case, but the other Custom would not hold notwithstanding the Act of Confirmation of their Customs. *1 Vent. 96. Bradnox's Case.*

Infamous.

If a Citizen or Freeman be attainted of Forgery or Perjury, or Conspiracy, at the Suit of the King, &c. or of any other Crime by which he is become infamous, upon such Attainder they may remove him.

So if one be convicted of any such Offence which is against the Duty and Trust of his Freedom, and to the publick prejudice of the City, &c. as if he burn or deface the Deeds or Evidences of the City or Burrough, or rase or corrupt them, and be of this convict and attain, these and other such like, are good cause to remove him.

But no Freeman of any Corporation may be disfranchised by the Corporation, unless they have Authority to do it, either by express words of the Charter, or by Prescription: but if they have no such Authority, then he ought to be convicted by course of Law before that he can be removed.

Mag. Ch.c.29. Nemo disseisietur de libero tenemento suo vel libertatibus, &c. nisi per Legalem judicium parium suorum aut per legem terræ. If the Corporation have power by Charter or Prescription to remove him for reasonable Cause, this shall be *per legem terræ*; but if they have not such Power he ought to be convicted, *per judicium parium suorum*. and yet tho they have lawful Authority, by Charter or Prescription to remove any from his Freedom, and that they have just cause to remove him, yet if it appear by the return, that they have proceeded against him without hearing him to answer what is objected against him, or that he was not reasonably warned, such removal is void.

How, and by what means a Man is to be disfranchised.

Now if any Bayliiff of a Town be displaced by the Mayor and Burgeffes of the said Town, &c. a Writ may be awarded out of the *King's Bench*, upon Complaint made to restore him, and if upon the *Pluries* they do not shew sufficient cause of his displacing he shall be restored: for the Bailiff is an Officer of the King, and so cannot be displaced without cause. *Tompson* and the Town of *Cambridg*: So of Aldermen, &c.

Not to be disfranchised without cause.

But

If they return
a sufficient
cause, and the
cause be false

But suppose they return a sufficient cause, and the cause be false, in such case the Court of *King's Bench* cannot award Restitution, neither may any issue be taken upon it; for that the Parties are Strangers, and have no day in Court, but the Party grieved may have an Action upon the special matter against those which have made the Certificate, and aver it to be false, and if it be found for him, and he obtain Judgment against them, so that it may appear to the Justices that the causes of the Action are false, then they shall award a Writ of Restitution: and in such Action, or in Trespass, or false Imprisonment, as the case happens to be, the causes of his Disfranchisement ought to be pleaded.

Pleading.

11 Rep. 199. *Baggs's Case*.

Words of Con-
tempt no cause
of Expulsion.

Clark of Hereford being expelled from being a Burgess there, procured a Writ to the Mayor and Burgesses to restore him, or signify the Cause, who returned that he being Church-warden, presented one of the Burgesses maliciously, without cause, for being absent from the Perambulation, for which being rebuked by the Mayor, he said contemptuously, *I care not for Mr. Mayor, nor any of the Burgesses*, and for this cause he was expelled. And *per Cur.* It is no cause of expulsion; wherefore a Writ of Restitution was awarded. *Cro. Jac.* 506. *Clark's Case*.

Where a Per-
son may be re-
moved without
cause.

Warren being one of the Council of *Coventry* was removed, and obtained a Writ of Restitution, and thereupon the Corporation returned, that they had a Custom to elect any to be of the Common-Council, and to remove him *ad libitum*, and that *Warren* was removed, &c. and the Court held, that the return was good, and the difference is this, Where a Man is a Freeman or Alderman, &c. they cannot remove him from his Freedom or Place without cause; and in such a case such a Custom

Custom is void, because a Man hath a Freehold therein ; but to be of the Council is a thing collateral to the Corporation ; and then the Council surmised that he was an Alderman, and removed ; whereupon a new Writ was issued to restore him to his Aldermanship.

And this Consideration brings me to the next,
viz. of Mandamus.

C A P. XXVII.

Mandamus and Returns.

To restore a Common-Council-Man of Northampton. The Manner of a Moving must be returned. Where removal may be without Cause, and where not. Of Election durante beneplacito. Debito modo electus how extends. The Court of B. R. may force a Corporation to swear a Return, sed quer'. Charter merges not any ancient Privileges. Removal for Nonsubscription upon taking the Oaths. Where the Return good or not. When a Man agrees to be of a Company he must submit to the Laws thereof. A Peremptory Mandamus, Mandamus to enter up a Judgment. Recorder, Serjeant, Common-Council-Man. Resignation returned. The bringing the Mandamus admits the Corporation. Mandamus to make Apprentice Free, Fellow of the College of Physicians, Attorney, Solicitor, Town-Clerk, Steward of a Court Baron, Leet, Usher of a School. Debitè admissus how tried. Treasurer of the New River Water. A Minter. Ill Return because one part of the Corporation left out. Durante bene gesserit. Mandamus Teste out of Term. Of filing the Returns. Attorney in Inferior Court. President of a Mandamus to Dr. Widdrington, Fellow of Christ's-College in Cambridge.

IF any of the Bailiffs of a Town be displaced by the Mayor and Burgeses of the Town, a Writ may be awarded out of the King's Bench, upon complaint, to restore him; and upon the *Pluries* if they do not return sufficient cause to displace him

him, he shall be restored, for a Bailiff is an Officer of the King, and shall not be displaced without cause. 2 *Rols Abr.* 456.

Braithwait brought a *Mandamus* to the Mayor, Bailiffs and Burgeses of the Town of *Northampton*, to be restored to the Place of Alderman there. They make a Return, wherein they set forth the Letters Patent 16 *Car.* 1. by which they were incorporated of a Mayor, 2 Bailiffs, and 48 Burgeses, and Power given to hold a Common-Council; and that the Mayor, Bailiffs and such Burgeses as had been Mayors (commonly called Aldermen) should have Power, upon just cause, to amove any Common-Council-Man from his place there: And set forth how *B.* was a Member of the Common-Council, and had committed divers Offences, which they expressed; whereupon *tali die & An.* the Common-Council *summoniri procuraverunt* the said *B.* and he refusing to come to answer was the same day amoved *ab officio suo & loco suo in Communi Cōsilio per Majorem & Burgeses Autoritate & secundum Chartam prædict.* It was set forth also, that they had command from King and Council to amove him.

Exceptions to the Return.

1. It doth not appear *quod summonitus fuit.* But it was held *summoniri procuraverunt* was all one. *Aliter* if it had been *procuraverunt J. S. cum summonire*, that is ill.

2. They had not pursued their Authority. The Action is said to be *per Majorem & Burgeses*, and that might be by Mayor, and Burgeses that never had been Mayors. *Non alloc'* It shall be intended that all the Burgeses were there, and that they all agreed to remove him. And it's said *per Majorem & Burgeses secundum Chartam.* If it had been returned that he was amoved *secundum Chartam*

The Manner of removing must be returned. *Chartam* generally, it had not been good; for there must be the manner returned, that the Court may judge whether the Authority be pursued. It was said, *per Cur'* That the King and Council may disfranchise any Member of a Corporation. 1 *Ventr.* 20. *Braithwait's* Case.

Where they
may remove
without cause
and where not.

If the Return be upon the removing of a Town-Clerk that they had Authority to grant the Office of Town-Clerk *durante beneplacito*, then there need no cause of removal be expressed in the Return. But *Twisden* took this difference in *Dighton's* Case, who was Town-Clerk of *Stratford* upon *Avon*. Where any such Power is to choose a Man into a Judicial Office, as an Alderman, which place concerned Judicature, there they cannot remove him without Cause; but this was in a Ministerial Office, 1 *Ventr.* 77.

Now in 2 *Cro.* 540. *Warren's* Case, the Return was as in *Dighton's* Case, *Durante beneplacito*. But the Case of Alderman differs from a Town-Clerk; for an Alderman is a part of the Corporation, which is a discontinuing Body, and no Member thereof can be displaced at the Will of the rest without cause. So of a Common-Council-Man. If the Letters Patent had been to choose a Town-Clerk generally, it had been for his Life: Or to choose one, provided they might turn him out at their Will and Pleasure, yet they could not have done so without cause. But the Authority is absolute to choose one *durante beneplacito*. 1 *Ventr.* 82.

Holt Recorder of *Abingdon* was chosen so *durante beneplacito*. *Quer.* had the Election been under the Common Seal. *Vid.* Sir *Tho. Foxes* 52.

A. M. had a *Mandamus* directed to *C. L.* Mayor of the Burrough of *T.* in *Cornwall*, to be sworn Mayor there, according to an Election made of him by the said Burrough; to which Writ the said *C. L.*

returns.

returns, That before the coming of the said Writ, (*viz.*) such a day, he the said C. L. was removed from being Mayor, and one W. A. then chosen admitted and sworn, and from that time *hucusque fuit & adhuc est Major Burgi prædicti* and by reason of the said Office hath the custody of the common Seal, and therefore the said C. L. could not restore him as the Writ requires. And it was objected this is no good return, because he saith not the new Mayor was *debito modo electus*, and it may be he was chosen not according to Charter. The Court was divided, some being of Opinion that it shall be intended he was *debito modo electus*. It was said in this case if the Court suspect a Return to be false, this Court (B. R.) can make a Corporation to swear a Return. *Raym.* 365. *Manaton's Case*. But in *Stephen's Case* *Raym.* 431. *Vid.* this Case in Sir Tho. Jones, 177. such Return was adjudged insufficient, because it answers not the Gift of the Writ; for by such return any Officer may be kept out, for the Party may procure another to be chosen before the Party elected can procure a Writ. The Defendant ought to have returned that the Person that procured the *Mandamus* was never elected, and so he might have an Action for his false Return.

Mandamus to restore one to be Alderman of *Carlisle*; the Return was of the Charter of King *Charles* the First, though as they set forth, they were time out of mind a Corporation, and that every Alderman should continue so during his Life, if he should so long well behave himself. They return a great misbehaviour and riotous doings to the Mayor and Aldermen, and therefore they removed him. *Per Cur.* the Return is good; for though by the Charter of 13 Car. 1. there is no Power given to the Corporation to remove an Alderman, yet when the *Consiliarii, alias Aldermanni*, were before the said Charter removable for reasonable cause, the same Power

Power still remains, for that the Charter doth not merge nor extinguish any of the ancient Privileges. *Raym.* 435. *Haddock's Case*.

Mandamus to the Mayor, Sheriffs Citizens and Commonalty of the City of *Norwich*, to restore *Thacker* to the Office of Alderman of the said City. They return for Cause, That the said *Thacker* being elected an Alderman in the 16 *Car.* 2. took three Oaths in the said Act, but did not subscribe when he took the Oath for the executing of his Office, but subscribed it when he took the Oath before two Justices of Peace of the City; so they chose another in his room. *Holt*, the cause is not sufficient to hinder Restitution; for it appears not that *T.* was required to make Subscription. *Per Cur.* Tender is not necessary, but the Officer at his Peril ought to do it, otherwise it should be in the Power of the Corporation to omit it. The Office is void by non Subscription; for this *Proviso* makes the Election void, as in Stat. 31 *Eliz.* against *Symons*, Sir *Tho. Jones* 121. the King against *Thacker*.

When a Corporation amoves a man from Town-Clerk, &c. though it do not appear on return that they had discharged the Person by any matter in Writing under Seal, it may be good if it be returned that it was done by the Mayor and Burgeses, and a Corporation cannot do any thing by parol. *Vide supra.* 1 *Ventr.* 77. *Dighton's Case*.

Tavernor chosen into the Livery of the *Vintners* Company in *London*, had a *Mandamus* directed to the Master, Wardens and Assistants of the said Company to admit him to be a Livery-man, according to the said Election, to which they return, their Incorporation 2 *Feb.* 9 *Jac.* 1. and that they may make By-Laws: That the Office of Livery hath been a place of Dignity, and that every one elected into the said Office used before and since the said Letters

Patents

Patents to pay a certain Sum of Money towards the necessary Sustainment of the said Society; that for many Years before 24 Apr. 1656. that a Sum of Money which every Liveryman paid before his Admission exceeded 31 l. 13 s. 4 d. and then a By-Law was made that the Payment should be so much only; and from that time the said Sum hath been always paid by every Man that was admitted. That 18 June, 1680. & ante adventum brevis *prædict.* he was chosen to be a Liveryman, and the Master, Wardens and Assistants were ready to admit him upon payment of 31 l. 13 s. 4 d. which he refused. *Per Cur.* Were the Sum more or less, it could not make the By-Law void: For it is only to bind the Members of the Corporation; and when a Man will agree to be of a Company, he doth thereby submit himself to the Laws thereof. And adjudged a good Return. *Raym.* 446. *Taverner's Case.*

When a Man agrees to be of a Company, he must submit to the Laws thereof. (£

After a peremptory *Mandamus* to swear an Officer, no Examination shall be permitted whether he were lawfully chosen. *Sir Tho. Jones* 215.

A *Mandamus* lies to the Mayor and Aldermen of London to make them enter up a Judgment. *Raym.* 214.

If a Recorder of a Town, *dum se bene gesserit*, by which he had for his Life, be displaced, a Writ of Restitution lies. *Sir Rich. Strode's Case*, 1 *Rolls Abr.* 456.

Such a Writ lies to restore a Serjeant of a Town if he be displaced. *ibid.*

Such Writ lies to restore a Common-Council-Man of London, being suspended by the Common-Council. *Estwick's Case*. 2 *Rolls Abr.* 455.

Mandamus was directed to the Mayor to restore T. to the Burgeſſhip. The Mayor returns for Cause of his removal, that he resigned. Exception was taken, that it doth not appear how the Corporation

commenced, either by Letters Patents or Prescription. *Per Cur.* he had resigned voluntarily, and he is Estopped to say the Mayor had not Power to remove him. Every Corporation, as a Corporation, have power to take such Resignation. *Sid. p. 14. Le Roy versus Tidderly.*

Note, By the bringing the *Mandamus* they are admitted to be a Corporation; and on a *Faux Return* Action on the Case lies against them by the Name in the Writ. 1 *Keb. 20.*

Mandamus lies to make one free of a Company or Corporation, having served Seven Years Apprentice.

There cannot be a *Mandamus* to restore one of the Fellows of the College of Physicians of *London*, for he is a voluntary Member. *Dr. Goddard's Case, Sid. 29. 1 Keb. 75.*

The Court refused to grant a *Mandamus* to restore an Attorney of a Corporation of *Canterbury*, though a Franchise for Life, being only private. So of a Solicitor. *Contra* of a Town-Clerk. 1 *Keb. 349. Hurst's Case, vid. Sid. 94. 1 Keb. 387.*

Mandamus was denied to restore a Steward of a Court Baron; for it is a private thing and concerns the Administration of Justice. But of a Steward of a Court Leet it lies.

Underbill's Case cited in *Hurst's Case*, 1 *Keb. 387.* A *Mandamus* was granted to the Burrough-Court of *Southwark*, to restore an Attorney; and an Affize will not lie of such Office, and so the Party without Remedy. In *Hurst's Case* the Court was divided.

No *Mandamus* lies for the Usher of a School in *Cambridge.* *Sid. p. 40. Stamps Case.*

Mandamus was directed to the Mayor of *Wigan* to restore an Alderman. The Mayor returns they are a Corporation within the County Palatine of *Lancaster*, and so not compellable to return. The Court

Court fined him an hundred Marks. *Sid. p. 92.*

Mandamus to restore one to the place of Town-Clerk. They return that he was never *debitè admissus*, and so they could not restore. *Per Twisden*, had it been *nunquam debito modo admissus*, it might have been good. And *per Cur.* the Return as in the case of *London*, 8 *Rep.* the Return good, and goes only to the Custom and Usage of the City, not whether he were legally admitted, the Law is not hereby left to the Jury. But however the Legality of Admission may be directed by the Judge before whom the Trial is ; and it may be that he never took his Oath as he ought by their Charter, before Admission, and adjudged the Return good. *Debite vel debito modo.* 1 *Keb.* 660. the King against *Hereford*.

But by *Mr. Siderfin* in his Report of this Case of *Hereford*, it was adjudged to be an ill Return ; for it ought to be *non fuit admissus* generally, for if the return be *faux*, the party grieved shall have his Action on the Case ; of which Advantage he should be ousted, if the special Return shall be allowed. *Sid.* 209, 210.

No *Mandamus* lies for an Usher of a School in *Cambridge.* *Sid. p. 40.* *Stamp's Case.*

Mandamus was granted to restore one to the Treasurer-ship of the *New River Water* in *London*; *Middleton's Case.*

Mandamus was brought to restore one to a place in the Mint, and granted. *Sid.* 304.

One of the Corporation shall not be turned out because he refuseth to pay his part towards the Renewal of the Charter. *Sid.* 282. the Mayor of *Rippon's Case.*

The Writ was directed to the Aldermen, Bailiffs and Commonalty of *Brecknock* to restore an Alderman, and the Return is by the Bailiffs and

To 2

Capital

Capital Burgeſſes without the Commonalty ; which *per Cur.* is ill, and not like a Return by any Juſtice of Peace upon a Writ of Error directed *Cuſtodibus Pacis*, becauſe here the Writ is ſatiſfied. But in the Caſe at Bar, the one part of the Corporation may make one, and the other part another Return. 1 *Keb.* 33.

On *Mandamus* to reſtore a Steward, they return that they have turned the Steward out without cauſe and good, if the Patent be that they ſhall elect a Steward *durante beneplacito* of the Corporation. But it were adviſable to have a *Scire Facias* againſt them to repeal their Charter. *Sid.* 451. *Dighton's Caſe.*

Note, A *Mandamus* doth not give any Right, but reſtore to a Right. *Sid.* 286. *Baſſets Caſe.*

If a Writ out of the Kings Bench, as *Mandamus*, &c. be *Teſte* out of the Term it ſhall be quaſht.

Returns upon a *Mandamus* may on motion be filed, as Returns of *Certioraries*, without reading ; but on *Habeas Corpus* they muſt be read. 1 *Keb.* 29.

R. moved for a *Mandamus* to reſtore an Attorney within the Liberty of St. *Martins le Grand*, to be directed to the Steward there, & *ei conceditur per Curiam.* 1 *Keb.* 549.

The Caſe of *New-College* in *Oxon* was, By the Foundation they were obliged to ſtudy ſo many Years, and then to take Orders, and that the Maſter and Scholars, for enormous Crimes, ſcandalous and dangerous to the College, may expel any Fellow ; and that the Biſhop of *Wincheſter* ſhall be Viſitor, and no other ; and in caſe of Difference, all Appeals ſhould be made to him, and no other. And that this Fellow having committed an Offence ſcandalous and dangerous to the College, and he
being

being summoned and convicted of this by the Master, &c. was expelled according to the Statutes of the College, upon which he appealed to the Bishop of *Winchester*, where the Sentence was affirmed. This Return is not good, because it mentions not what the Offence was, so as the Court may Judge of it, whether it were sufficient Cause of Expulsion as in *Speckot's Case*, 5 Rep. *Per Cur.* The Bishop is appointed Visitor, and no other; he hath given Sentence, and what have we to do with it? This College is a Creature made by the Founder; and it would be hard to maintain any Appeal farther than he hath appointed. 2 *Levins* 14. *Dom Rex versus New-College* in *Oxon.*

Mandamus.

CAROLUS Secundus, &c. Magistro sive Custodi & Socijs Collegij Christi in Academia Cantabrigie salutem cum Rector & Warden Sacre Theologie Doctor ad locum unius Sociorum Collegij p̄dice in Universitate Cantabrigie p̄dice secundum consuetudinem ibidem hactenus usitatam nup̄ debite electus & admissus & constitutus fuit In quo quidem loco unius Sociorum Collegij p̄dice p̄dice R. W. se bene quiete & honeste gesserit & gubernabit vos tamen magister sive custos & socij collegij p̄dice p̄missorū non ignari p̄dice R. W. a loco unius sociorū collegij p̄dice minus iuste amovistis in nostri contemptu & ipsius R. dampnum non modicum & gravamen & status sui lesionem sicut ex querela sua accepimus Nos igitur p̄fate R. W. debitam & festinam iustitiam in hac parte fieri volentes vobis mandamus sicut pluries vobis mandavimus firmiter injungendo quod immediate post receptionem hujus brevis p̄fate R. W. in p̄stinatum locum suum unius sociorum collegij p̄dice restituantis cum omnibus libertatibus privilegiis & commoditatibus ad locum p̄dice spectantibus vel pertinentibus vel causam in contrarium inde nobis significetis ne in vestri defectu querela p̄veniat ad nos iterata Et qualiter hoc p̄ceptum nostrum executi nobis constare facite die martis proximo post quinquagesimam Secunde Trinitatis ubicunque tunc fuerimus in Anglia sub pena 200 l. hoc breve nostrum tunc remittendum Teste R. Foster apud Westm. 20 die Junij anno regni nostri 13.

Executio

Executio istius brevis patet in quadam
Schedula huic brevi annex'.

Respons' magistri sive custod' & scholar' collegii pdice in Universitate Cantab'.

Nos magister sive custos & scholares collegij pdice in Universitate Cantab' pdice per Henricum Regem Anglie sexce primo inchoar' & post ejus decessum p' Margaretam matrem regis Henrici septimi augmentati finiti & stabiliti serenissimo domino Carolo secundo nunc Regis Anglie humillime certificamus quod pdice Dom' Henr' VII. nup' Rex Anglie p' Literas suas Patentes magno Sigillo suo Anglie sigillat' gerend' date apud Westm' primo die Maij Anno Regni sui 20 quoddam collegium adtunc vulgariter nuncupat' (God's House) infra Universitat' Cantab' pdice in collegium p' pdice nomen Collegii Christi in Universitate Cantab' p' Henricum Regem Anglie sexce primo inchoat' & post ejus decessum p' Margaretam Comitiss' Richmond matrem Regis H. VII. augmentati finiti & stabiliti transulit & transmutabit. Idemq' nup' Rex H. VII. p' ead'dem literas suas patentes voluit concessit & ordinabit quod procurator sive magister & Scholares nup' collegii vulgariter nuncupat' (God's House) & Successores sui de cetero p' nomen magistri sui custod' & scholarium collegii Christi in Universitate Cantab' p' H. Regem Anglie sextu' primo inchoat' post ejus decessum p' Margaretam matrem Regis H. VII. augmentat' finit & stabilit' nominarentur & nuncuparentur imppetu' Idemq' nup' Henricus VII. p' eadem suas literas patentes voluit concessit & ordinabit quod dicta Margareta ordinat' sive statuta necessaria sive opportuna p' salubri statu & ppetua

tua gubernatione collegij p̄dice ac magistri
sive custos scholarium quorumcumq; ejusdem
collegij p̄ tempore existens ex assensu & con-
sensu eorundem magistri sive custos ac scho-
larium quorumcumq; facere ordinare & stabi-
lire possit Et quod magister sive custos
& scholares collegij illius juxta ordinationes
& statuta illa regularentur gubernarentur
ordinarentur & corrigerentur & quilibet eorū
regularetur gubernaretur ordinaretur &
corrigeretur in ppetuum Que quidem litere
patentes concessa sunt p̄ eundem nup̄ Regem
auctoritate Parliamenti virtute qua4 qui-
dem literarum patene p̄ p̄dice Margareta
ex assensu & consensu tunc magistri sive cu-
stos & scholai collegij p̄dice fecit ordinabit
& stabilivit diversa statuta & ordinationes
p̄ salubri statu & gubernatione p̄dice colleg'
& magistri sive custos & scholarium ejusdem
regulatione gubernatione ordinatione & corre-
ctione & in dictis statutis & ordinationib; p̄
p̄dice colleg' administrandis p̄ dictam Margare-
tam face ordinare & stabilire statutū fuit
inter alia put sequitur (videl) in statuto de
exercens improbis Quum ex prudentia
capitis ceterorum pendeat membrorum admi-
nistratio Ita quod si membrum aliquod pe-
ssilens & ceteris p̄niciosum fore judicabitur
ipsum penitus relaxandū est seu spes aliqua
fuit in illo sanitar ille modis omnibus sit
tentanda Idcirco volumus & statuimus
quod si quis scholarium sociozum de heresi
lesa majestate simonia usura perjurio coram
iudice commissis furto notabili homicidio
voluntario incestu adulterio seu fornicatione
manifestis aut sup aliquo crimine ullo confi-
mili legitime convictus fuerit coram magi-
stro aut ejus locum tenente tunc p̄ eundem
magi-

magistrum sive ejus locum tenendū duobus decanis a se accitis a dicto collegio proflus amoveatur tanquam membrum pestilens & ceteris valde perniciosum. In al vero minoribz transgīt ut si rixator fuerit aut peussor seditionis nocturnus deambulatoz vagabondus in die aut vehementer negligens in his agens ad que p statuta Collegii obligatur sive in divinoz officioz celebratione in disputatione tunc ad discretionem magistri aut ejus locum tenendū corrigatur si sic emendare fuerit bene res successit alioquin si tercia admonitus se non emendaret tanquam membrum insanabile a ceteris in omnino separaretur. Item sed ne nimis capitis severitas in membrorum vergat perniciem hac moderatione magistrum uti volumus & statuimus. Quod scilicet in omnibus ejusmodi connectionibus p eum exercendos duos decanos ad se vocabit utpote visus & auditus quicquid in eis rebz fecerit ut quum forte opus fuerit tanquam testes idonei citare possint totius rei gestie inter magistrum & scholarē puniendū nam volumus si magistrum p dicit ille scholaris senserit severum tunc eidē licebit ad Cancellarium Universitatis aut ejus Vicegerendū appellare. Et si Cancellarius aut ejus Vicegerens citata utraqz parte & re audita ex relatione decanoz assistentibus duobz in sacra Theologia doctoribz atqz ex judicio alterius eoz repererit Scholarem justum appellandi gravamen accepisse sine mora jubeat magistro illi injusta vexatione supledere sin contra scholarem illiusqz appellasse repererit ex judicio etiam alterius eoz sibi assistendū tunc sententia magi in scholarem prius lata robur suum & validam teneat firmitatem antedictam. Item appellationē

nisi

nisi dijudicationem a Cancellario aut ejus vicegerente inter duas hebdomadas juxta modum qui dictus est susceperit inanem volumus esse & supvacaneam. Item statuimus igitur quod Jo. permissione divina Rossens Episcopus & nunc Universitatis Cantab' Cancellarius quoad vixerit etiamsi forte Cancellariatu se abdicaverit visitator dicti collegii sit cui in officio illo faciendū quandocumq; ei magis videbitur opportundū magistrum sive ejus locum tenentē & scholares omnes tam socios quam discipulos parere volumus neq; illi solum sed & iustituto suo quando ipse impedire accidere non possit Illaq; omnia que superius in statute illis (aliis) de Cancellari aut ejus vicegerentē dicti sunt ad illum referri decernimus quamdiu fuit superstes post mortem vero ipsius ad Cancellari ceteros aut eorū vices gerentē ad quemcumq; p tempore suo quos etiam visitatores constituimus nisi forte magister collegii aut socioꝝ aliquis aut quisquam pensionarius in eod cancellari p'dice Universitatis fuerit aut vices ipsius gerens tum omnem authoritatem p'posite Regii Collegii tribuimus p illo tempore duntaxat Item quoniam nihil est tam luculentum quod non in captiosis verti in questionem potest ob eam rem volumus quod si in aliquo Statutoꝝ p'dice obscuritas aut ambiguitas forte videatur nemo al' quoad nos vixerimus Eadem interpretetur nobis non ante consule Ac postquam hinc deo nos vocante ingraverimus omnis ambiguitatis & obscuritatis declaratio ad collegii ipsius visitatorem p tempore existentē ptinebit cū assensu duorum in sacra Theolog doctor' aut ob eorum inopiam Bachelauriorum in eadem Et seniorum qui non

non ejusdem collegii sint in qua re quicquid illi decreverint eorū sententia stabitur quam nec appellatione neq; alio juris ullo remedio volumus impediri nisi forsan ipsa illorum interpretatio alicui alī statui aut ordinationi a nobis edicte aperte contravenit. Item Magistri seu custodes electi juramentum his verbis fieri volumus & statuimus Ego R. R. Testor & hec ejus scd Evangelia ne collegiū Christi cujus nunc sum electus magister & custos diligenter & fideliter administratur juxta vires & industriam meam pariq; modo illius bona omnia terras tenita possessiones redditus spirituales & temporales Juraq; libertates & p̄vilegia ceteras quoq; res unīversas tam mobiles quam immobiles curatur. Quodq; Sociorum neminem patiat̄ quamdiu Emolumentū a p̄dīce collegio susceperit ad facultatem aliquam se divertere p̄terquam ad Philosophiam & Theologiam & urgebo ut a gradu in gradu ascendant quam p̄mū fieri possit neq; ipse ego ad alī facultatē me conferā p̄ gradu meo suscipiendo p̄ter antedictas correctiones p̄terea & punitiones & reformationē tam scholarū sociorum quam discipulorum quoties & quo loco fieri conveniet jussu examinati (omni p̄sonā exceptione posita) aut p̄ meipsum aut p̄ alios saltem faciam juxta ordinationes & statuta p̄ Margaretam Comitissam Richmond ac Verā ac illustrissimū Anglię Regis H. vij. matrem p̄ collegii ipsius antedictę gubernationē jam edicte sive imposterum edendę que statuta omnia & ordinationes unīversas p̄ virili mea enitatur tam a me ipsa quam ab aliis integre inviolatęq; observari neq; dispensationem aliquam a diversis eadem statuta aut eorum aliquod p̄sertim quod ad magistrum sive custodē ptineat impetrabo

impetrabo nec ab alio curabo impetrari neque impetrare acceptabo ullo modo Ita me Deus adjuvet & hec sancta illius Evangelia Item quum nihil potest firmari validus apud bonos & pios quam jure jurando volumus ideo & statuimus quod scholaris quisque in socium electus priusquam admittatur hoc quod sequitur juramentum tactis sacrosanctis Dei Evangeliiis prestabit in presentia magistris & sociorum omnium eisdem verbis Ego R. R. Deinde Testor & hec sancta ipsius Evangelia me veraciter & integre observaverunt statuta omnia & singula que Marghereta mater illustrissimi Regis Henrici septimi fundatrix hujus collegii per eodem administrand per se aut suos edidit & curabo quantum in me fuit & ceteris meis consociis omnibus id fieri magistro sive ejus locum tenentem in omnibus quecumque legitime preceperit consilia ejusdem secreta collegii quod iuste fecit minime pandam nihil in quo eidem collegio consilio aut honoris accessio fieri possit impediam sed magis per meis viribus procurabo nemini socioꝝ consentiam ut ad facultatem alio se divertat per gradu in ea suscipiens preterquam ad Philosophie & Theologie nullam ullo tempore adversus aliquod statutum fundatricis nostre sive adversus hoc juramentum meum dispensationem impetrabo nec curabo impetrari nec ab aliis impetrare acceptabo ullo modo Hec omnia in me recipio & hoc jure jurando polliceor quatenus me Deus adjuvet & hec sancta ipsius Evangelia Item si quispiam socioꝝ legitime absuit cujus tamen redditus ad commodum aut honorem collegii ejusdem magistro sive ejus locum tenentem & majori parti socioꝝ videbitur necessarius ille si revocare

ill non redierit & quam primū congrue poterit nisi iustam reddidit causam eisdem approbandi societate item sua sit privatus & ulterius dicto domino Regi nunc humilime certificamus quod R. W. in brevi huic schedule annex' nominat Anno Dni 1644. & diu antea & postea usq; ad mensem Aprilis Anno Domini 1661. fuit unus socior' Collegii pdice debito modo dimissus Et juramentū pdice a socio quocunq; admitteūd pstand in forma pdice suscepit Et ulterius dicto Domino Regi humilime certificamus quod magister sive custos & scholares collegii pdici p multos annos jam elaps debuerint obligati in quodam scripto obligatorio 1000 l. quibusdam Edwardo Fisher sub conditione ad inde annex' non revocare quandam amissionem p ipsos aut predecessor' suos pantea factam de rectoria impropriat de Fendrayton in com Cantab eisdem magistris sive custod & scholaribus collegiis pd de jure spectand Quodq; magi sive custos & scholares collegii pd ad special instantis & requisitionem pdice R. W. existent socii dicti collegii postea & antea adventum brevis pdice p scriptum suum sigil suo comuni sigillae autorizaverunt & fiduciam suam reposuerunt in eodem R. W. ad colloquend & tractand cum pfae Edwardo Willen Thoma Willen Richardo Crosfeld & Edwardo Fisher ad obtinend ab eisdem eorum relaxacione de scripto obligatorio pdico p usu magistris sive custod & scholarium collegii pdice ea intentione quod sive aliqua forisfact' rectoriam pdice in comodum & pficud pdice magistris sive custod & scholarium collegii pdice de novo admitterent idemq; R. W. postea publice

publice affirmabit & asseruit magistro sive
custod & scholaribus p̄dicē quod ipse a p̄fate
Edwardo Willson Thoma Wilson Richardo
Crossfield & Edwardo Fisher obtinuisse
relaxacō de scripto obligatorio p̄dicē cui
quidem affirmationi p̄dicē magi sive Custos
& scholares collegii p̄dicē fidem Adhēntes
postea p̄ quadam pecunie summa sibi solue
renobabant demissionem de rectoria de Fen-
drayton p̄dicē ipso eodem R. W. adtunc &
ibidem p̄sente existē & ad inde assentientie
& proportionabilem partem suam summe pe-
cunie p̄inde solue recipiente Et postea idem
R. W. recepit considerabilē pecunie summa a
magistro sive custod & scholaribus dicti col-
legii p̄ expensis suis circa p̄urationem dice
suppōit relaxacōis ubi reuera vel nullam
talem relaxacōem unquam obtinuisse vel si ob-
tinuisse dictis magistro sive custod & schola-
ribus aut ad usum eorū nunquam delibasset
& quambis debite requisitus delibare recu-
savit ratione cujus iidem magi sive custos
& scholares collegii p̄dicē in periculū foris-
fuit de obligacionis 1000 l. p̄fate E. W.
C. W. R. C. & C. J. manifeste inciderint
& magi sive custos & scholares dicti collegii
a dicto R. W. improbe & fraudulente illa-
queati sunt ad grave dampnū dicti collegii
& contra juramene p̄dict a dice R. W. in
ea parte suscepe Quodq̄ postea scilicet octavo
die Octobris Anno Domini 1660. p̄d R. W.
existē legitime summonitus de p̄missis re-
spondere & inde oucratus & sup̄ comperentia
sua auditus quod sibi voluit in defensū suam
eoram p̄dicto R. C. abtunc & adhuc existē
magistro sive custod de collegii duobz deca-
nis ejusdem collegii scilicet W. D. & C. B. ac-
citis

citis & pſentibus de premissis legitime con-
 vice fuit Et ulterius certificamus quod
 quidam E. H. sacre Theologie Doctor per
 ultima voluntatem suam in scriptis dedisset
 in usum unius p̄dicatozis de d̄ collegii p̄
 tempore existē in perpetua quandam pen-
 sionem s̄ l. p̄ M̄ sub conditione quod idem
 p̄dicatoz p̄dicaret tres seperales conciones
 ad tria seperalia loca annuatim alie dicta
 pensio cessaret imperpetuū & ad heredes
 de d̄ E. H. revertet Quodq; p̄dice R. W.
 tunc existē socius dicti collegii & ad p̄dice
 hilis & legitime authorizatus Anno 1645.
 legitime nominat & constitut fuit ad officiu
 p̄dicatozis p̄dice & suscepit super se conciones
 ill p̄ anno illo & diversis annis postea per-
 formare & p̄dicare secundum voluntat p̄dice
 E. H. p̄dice autem R. W. p̄missa satis sciens
 callide & subdole ambiens p̄dice p̄conem
 s̄ l. sibi solummodo obtinere & reliquos socios
 ejusdem collegii impossitum abinde depri-
 vare nec conciones p̄dictas nec aliquam ear
 p̄dicabit sed falso & fraudulene absq; ulla
 ronabili causa defalt perinde fecit & postea
 callide cum heredibus dicti E. H. nomine
 suo p̄ p̄dict pensione contraxit & ipsam pen-
 sionem s̄ l. sibi p̄quisivit in decepconem reli-
 quorum sociozum collegii p̄dice & contra ju-
 ramentum p̄dice a p̄dice R. W. in ea parte
 prestitū Quodq; postea scilicet octavo die
 Octobris Anno Domini 1660. p̄dice R. W.
 existē legitime summonitus de p̄missis
 ulterius mentionae respondere & inde onera-
 tus Et super comparentia sua auditus q̄s
 sibi voluit in defensionem suam coram plac
 R. C. adtunc & adhuc existē magistro sive
 cultor

custos collegii predicti (duobus decanis & eisdem collegii scilicet M. H. & T. B. accitis & presentibus) de offensâ predictæ legitime convicte fuit Et ulterius certificamus quod p̄dice R. W. eodem tempore coram dicto magistro sive custodē (dictis duobus decanis accitis & p̄sentibus) accusatus fuit de diversis al fraudibus turpissimis p̄ ipsum perpetratus contra pupillos suos existentes scholares convivas aut pensionares dicti collegii quodq̄ idem R. W. legitime summonie instans requisivit dictum magistrum sive custodē ad audiens accusationes illas Et quod justum sibi foret facere super quo p̄dice R. W. auditus quid sibi voluit in defensionem suam coram dicto magistro sive custodē in p̄sentia dictorū decanorū legitime convictus fuit Imprimis quod dice R. W. in billa sua pp̄ manu scripta expensat p̄ W. M. pupillo suo existē conviva dicti collegii p̄ quarterio anni finiente ad festū Pativitæ Domini anno dice 1652. exigebat 4 l. & 7 d. p̄ Communiis & Sizationibus Anglice Commons and Sizings dicti W. M. in eodem collegio ubi rebera Communie & Sizationes dicti Willielmi Han p̄ eodem quarterio anni attingebant tantummodo ad triginta & octo solis & septem denar & non amplius Ac etiam quod idem R. W. in billis suis expensat p̄ eodem pupillo suo existē conviva dicti collegii p̄ sex seperalibus quarteriis annozū pp̄ sequens exigebat diversas summas pecunie p̄ Communiis & Sizationibus multo majores quam rebera debite fuerunt p̄ eisdē quodq̄ dicens R. W. p̄ defencone sua respondit quod in dictis summis sub nomine Communiæ

munia & Sisacon continebatur aliquod p
tutione & al rebus quamvis rebera in eisde
billis alij ponebantur certe summe pecunie
sub expresse nomine tuitionis dicti pupilli
sui p eisdem annoꝝ quarteriis Quodq;
idem R. W. in ulterioꝝem defensionem suam
ostendit illam facer manu W. B. tunc &
adhuc mancipis collegii p dice ad ipsius R.
W. mandae scripta secundum formam p dice
billar verar que a dicto mancipe scribi solent
eujusmodi falsas billas ad formam verar
sepe pcurabit describi a dicto mancipe pposi-
tu illius ignozante & mandatis obsequente
Quodq; p dictus R. W. nono die Octobris
eodem anno legitime summonitus & requi-
situs coram dicto magistro sive custod di-
ctis duobus decanis accitis & plentibus
ad respondend super diversis alijs billis ex-
pensar p pupillis suis existentibus condivis
& pensionar dicti collegii in quibus accu-
satus fuit eoldem diversis summis pecunie
defraudasse & super al diversis criminibus
eidem impoſe dictus R. W. postquam com-
peruisset reculabat diutius manere & prinus
discessit a collegio p dice Quodque p dice
Magister sive custos & major pars socioꝝ
om dicti collegii judicantes redditu dicti R.
W. ad commodum & honoꝝem dicti collegii
esse necessar ex vi statuti p dice dictum R. W.
sic discendend revocarunt in diem tertium scilicet
undecimum diem octobris eadem sub pena
privationis de societate sua quodq; p dictus
R. W. debita notitia p ipsum inde habita
dicto tertio die non redijt nec ullam iustam
causam de non redeundo eisdem magistro sive
custod & socijs reddidit quamvis postea scilicet

decimo octavo die Aprilis Anno Domini 1661. dictus R. W. fuit iterum legitime summonitus ad causam illam (inter al red-
dend coram dicto magistro sive custod & sociis omnibus dicti collegii capitulae convocatis quodq postea eodem octavo die Aprilis dicto anno dictus R. W. coram eodem magistro sive custod (dictis duobus decanis accitis & p'sentibus) fuit legitime summonitus & requisitus ad respondend Etiam sup aliis diversis criminibus eidem R. W. ut & p'dictum est imposie a quoz' exoneracon nup fugiebat dictus autem R. W. comperens seditiose & contumaciter recusabit respondere & peremptorie affirmabit & asseverabit se nolle submittere se auctoritati dice collegij magistri sive custod nec adtunc de futuro & contra expressum mandatum dice magistri sive custod dice R. W. contemptuose discessit & contumaciter se absentabit quousq idem R. W. tercio inde admonitus p dictum magistrum sive custod duobus decanis dice collegij accitis & p'sentibus se non emendabit sed non obstinac & finaliter in obstinacia sua perseverabit contra statuta p'dice & juramene a dicto R. W. in ea parte p'stitu quodq in consideratione inde & omnium al criminum suoz' ei ut p'fere imposie omnibus membris ejuldem collegii prius convocae in aulam publicam ejuldem collegij p sonitu campanae idem R. W. ad tunc & ibidem p p'dice R. C. tunc magistrum sive custod ejuldem collegii cui de jure in hac parte ptinuit W. H. & A. B. tunc decanis dicti collegii accitis & p'sentibus tanquam membrum pestilens & ceteris p'nciosum & insanabile juxta statuta collegii

collegii illius a ceteris membris inde separatus & amotus fuit quodq; tempore amotionis p̄dice fuit & adhuc est cancellarius uniberſitatis p̄dice & ejus vices gerens ibidem in eadem uniberſitate idem autem R. W. ad dictum cancellar̄ aut ejus vices gerentem exiſtend̄ viſitatozem dicti collegii appellacionem ſuam ſup̄ p̄miſſis modo & forma in ſtatuto p̄dice conſtitue non fecit & ea de cauſa dicto R. W. ad p̄ſtind̄ locum ſuū uniūſ ſocioꝝ collegit p̄dice reſtituere non poſſumus.

*Mandamus to reſtore a Capital Burgeſs of
Plymouth, vide James Baggs's Caſe Co.
11 Rep.*

C A P. XXVIII.

Constructions of Acts of Parliament
for the Benefit of Corporations,
or not.

*Statute of 13 Eliz. c. 10. Statute of 1 & 2 Ph.
& M. c. 8. of Trinity College in Cambridge.
Where Corporations barred by Fine and Non-
claim, and where not. Statute of 21 Jac. 23.
of Habeas Corpus.*

Stat. 13 Eliz.
c. 10.

PER Stat. 13 Eliz. c. 10. all Leases, Gifts, Grants, Feoffments, Conveyances or Statutes to be made or suffered by any Master and Fellows of any College, Dean and Chapter of any Cathedral or Collegiate Church, Master or Warden of any Hospital, Parson, Vicar, or any other having any Hospital or Ecclesiastical Living, or any Houses, Lands, Tythes, Tenements, or any other Hereditaments, being parcel of any such College, Church, Cathedral, Hospital, Rectory, Vicaridge, or any other spiritual Living to any Person or Persons, Bodies-politick or corporate, other than for the term of 21 Years or three Lives shall be utterly void, &c. The Masters and Fellows of *Magdalen College in Cambridg*, 12 Eliz. did give or Grant to the Queen, her Heirs and Successors, a Messuage parcel of their College Lands, with a proviso, That if she did not grant it to *B. D.* and her Heirs before such a day, then the Grant to be void.

The Question was, If the King were bound by the said Act of 13 Eliz. and resolved that the said Act

Act restrains the said Masters and Fellows to convey the said House : for the Queen was expressly within the words of the said Act ; Any Person or Persons, Bodies politick or corporate, and the King is *persona mixta*, then no construction shall exclude her out of the meaning. For general Statutes which provide necessary and profitable Remedy for the maintenance of Religion, Advancement of good Literature, and for the relief the Poor, shall be extended generally according to their words. General words of Statutes, which tend to perform the Will of the Founder or Donor, shall bind the King, although he be not named. 11 *Rep. Magdalen College Case.*

1 & 2 P. & M. c. 8. That it should be lawful, &c. to give Lands, &c. by Feoffment, Grant, or other Assurances, or by his last Will and Testament in writing to any special Body-politick or corporate, notwithstanding the Statute of *Mortmain A. C.* seized of Lands in *London* in Fee 4 & 5 P. & M. by his last Will in Writing, devised them to the Master, Fellows and Scholars of *Trinity College in Cambridg*, and to their Successors for ever, for the finding of certain Grammar poor Scholars. Now tho the said College does not stand only upon Divines, but others also, and the intent was to find Grammar Scholars, yet it was favourably expounded, it held good, and the Act was expounded to bind the King, tho the Land was held of him.

Sir E. M. devises Houses in *London* to several Persons and their Heirs, to several charitable Uses, and if they did not perform the Uses then to W. M. and his Heirs to perform the Trusts ; and if he failed for two Months, then to the Mayor and Commonalty of *London* to perform the Trusts. No Trust was performed. *Roger Alford*, one of the first Trustees died, and *Edw. Alford* his Son sold

the same to *J. S.* to perform the Trust, *J. S.* being in Possession, a Fine *sur* release, with Proclamations was levied to him, and died seised, which Land descended to his Son, the Trusts were not performed. After the Mayor and Commonalty had notice of the Will, and they entred. *Per Cur.* The limitation to the Mayor and Commonalty is a void Limitation, being a possibility upon a possibility, and the Fine and Non-claim for 5 years hath absolutely barred them. *Cro. Car.* 574. the Mayor and Commonalty of *London* against *Alford*.

Corporation
where barred
by Fine and
Non-claim.

What Corpora-
tions are not
bound by Fine
and Non-claim.

So the words of the Statute of 4 *H. 7.* of Fines are general, yet the Successor of a Bishop, Parson, Vicar, or any other sole Corporation, shall not by construction of Law be bound as a Corporation aggregate of many shall be; for then the Bishop, without the Dean and Chapter, the Parson and Vicar without the Patron and Ordinary, &c. may by their sufferance bind their Successor, which would be a great cause of dilapidation and diminution of Ecclesiastical Livings. *Stowell Pl. Com.* 376. *Howell's Case*.

Fine and Non-claim shall not bar the right of Masters and Fellows of a College; for the words are, *That all Lands, Conveyances and Statutes had made, done, or suffered by any Masters and Fellows, &c.* These words permitted or suffered by the said Masters and Fellows, shall not extend only when the Master and Fellows suffer a Recovery, &c. against themselves as Party to it, but generally according to the Letter, when they suffer others to levy a Fine with Proclamations, and suffer also five Years to pass without Claim. 11 *Rep. Madg. College Case*, fo. 78.

An *Habeas Corpus* was awarded to the Court of *Guilford* in *Surrey*, to remove a Cause there depending, they notwithstanding proceeded. It appeared upon Examination, that the Writ was delivered

livered after the Issue was joyned in Debt, *viz.* *per minas* pleaded, and that the Issue was joined six Weeks after the Action brought, so as by the Statute of 21 *Jac. c. 23.* the Judge might refuse. Resolved *per tot. Cur.* because it was in an Action of Debt upon Bond of 200 *l.* not made within that Village, that the Statute doth not extend to this Case; for that provides removing by *Habeas Corpus* such Actions only where the cause of Suit is properly arising within the Village. Secondly, For as much as the Proceedings were before one who was Town-Clark and Attorney of the Common-Bench, and not an Utter-Barrister (as the Act by express words provides,) Resolved, That after the *Habeas Corpus* delivered, the Proceedings were ill and not warranted by the Statute, and a *Superfedeas* was awarded; and the Judges of the *King's Bench* being informed thereof, agreed that their course in the *King's Bench* was to disallow Proceedings in an Inferior Court, after an *Habeas Corpus* delivered, unless it were a Cause arising in the Village or Corporation. *Cro. Car. 29. Clapbam's Case.*

Stat. 21. *Jac.*
c. 23.

C A P. XXIX.

Privileges granted to Corporations.

To be quit of Toll. Putting in Bail in Oxford University. Privilege granted by way of Interest, and execution to one not a Member. Gloucester City made a County. Claims of Liberties before Justices in Eyre. Exemption from Furies out of their Corporation, when, and by whom such Privileges to be demanded.

To be quit of
Toll.

Action on the Case against *H.* for taking Toll for passage over the West end Bridge of *W.* and shews for Title the Letters Patent of *Edw. 6. An. 2.* to the College of *All-Souls* in *Oxford*, for them, their Tenants and Farmers, to be quit of Toll, and conveys himself as Farmer to the College; yet had the Defendant such a time taken Toll of him against the Form of the Patent, &c. Defendant pleads in Bar the Statute of *28 H. 6.* of Resumption of all Liberties and Franchises formerly granted by *H. 6.* Plaintiff by way of Replication pleads the Statute of *4 H. 7.* by which all the Patents granted by *H. 6.* to this College are made good, Statute of *28 H. 6. nient obstant.* Defendant demurs, This is no departure; for there is no new matter contained in the Replication, other than what was in the Declaration; for the Title of the Plaintiff still remains upon the Letters Patents, and is one title in one and the other. *Yel. p. 13, 14. Wood and Hawkhead.*

Privilege and Custom in the University of *Oxford*, time out of Mind, a Court to hold plea in any personal Action, &c. (except Mayhems, Appeals

peals of Suits of Freehold) and declares further, that if any Scholar or privileged Person sue any forreigner, the Forreigner (*extraneus*) ought to put in Bail, which Bail ought to pay the Condemnation, and shew how the Defendant was sued there in the Court of Oxford, in *placito transgr. super casum nuncupat' in causa injuriæ*, and how the Plaintiff was Bail for him, and that the Defendant promised to save the Plaintiff harmeless of the Bail, and shews how that the said Suit was so far prosecuted, that the Defendant was there condemned, and the Plaintiff forced to pay the Condemnation. *Per Cur. præter Fenner.* The Action lies well, and he need not recite in his Declaration all the proceedings in the Suit in the Court of Oxford, being but a Conveyance to the Action and merely collateral to the point in question, which is the promise. *Yelv. p. 16. Cox and Jennings.*

The King made a Corporation of
and Grants *iisdem Ballivis & Civibus, heredibus & successoribus suis quod Ballivi & Recordator Civitatis præd. pro tempore existen. seu duo eorum quorum præfat. recordatorem unum esse volumus una cum hujusmodi aliis personis per nos heredes & successores nostros ad hoc assignand. de tempore in tempus in perpetuum sint justiciarii nostror' heredum & successorum nostrorum ad gaolam Civitat. præd. de prisonar. &c. deliberand. Et volumus concedimus & precipimus quod nullus Vicecomes custos pacis Justiciarius vel alius Minister sive Commissionarius noster hered. aut successorum nostrorum civitatem prædict. ad aliquod in ea exercend. vel exequend. &c. de cætero intromittat nec ingredi presumat sub pena 100 l.* Upon this Letter Patent was the Question, If the Justices of Goal Delivery of the County may try Felony, which are Felons in the City. *Per Cur.* They may, for the
Patent

Patent as to the purpose to hold Goal-Delivery by the Bailiffs and Recorder is void, in as much as they have not Authority given them, unless with such as the King shall appoint, the which appointment the King is not bound to make, and which appointment, if it be made, ought to be by Letters Patents, by which they that are named in it shall take their Power and Authority and not otherwise, by which they should not have joint Authority with the Bailiffs, and their Authority commencing by Patent, will be at several times, and so the King is deceived in his Grant. 1 *Anderfon nu.* 304.

The King may grant a Privilege to a Corporation by way of Interest, and commit the execution of it to some Persons which are not Members of the Corporation. *Hob.* 16.

Glocester City The Town of *Glocester* was parcel of the County of *Glocester*, and King *Richard* the 3^d. by Letters Patents grants, that the Town of *Glocester* from thenceforth should be an entire County by it self, incorporated in Fact, and named, and distinct and utterly severed from the County of *Glocester*, and not parcel of the same, for ever, and that the said County so separate shall be called the County of the Town of *Glocester*, saving notwithstanding, and reserving to us and our Heirs, that the Justices of Assize in the County of *Glocester*, and the Justices of the Goal-Delivery in the said County, and the Justices of Peace in the said County shall hold their Sessions, and the Sheriff his County, and every of them may freely enter into the Village aforesaid, and the Session and Counties to hold for every cause and matter out of the County of the Town of *Glocester*, and within the County of *Glocester*, arising as they were accustomed to hold them, and that no Justice of Peace of the County of

of *Glocester* shall intermeddle with any thing in the said Village. The Question was, If the Justices of Assize and Goal-Delivery may sit in the Town of *Glocester* to indict Felony made in the County, but in the Town of *Glocester*, or not, and it was held they might; for it appears that the intent of the King was as to these purposes, to have the Town of *Glocester* Parcel of the County, and for other purposes to be a County of it self. 1 *Anderson Nu.* 300.

20 H. 6. King H. 6. granted by his Letters Patents to *Corpus Christi* College in *Oxford*, that they and their Successors, and their Tenants, should be discharged of the payment of Toll for Pontage and Passage in every place in *England*, and it was admitted a good Custom. 2 *Roll. Abridg.* 198. *Wood* and *Hawkill*.

Note, Corporations that have any Liberties were to make their Claims before the Justices in Eyre. *Quo Warranto* was brought against the Town of *Bedford*, for that they had not the last preceeding Eyre made claim of divers Liberties, and thereupon in that Eyre adjudged *quod omnes Libertates non clamat. capt. fuissent in manus Dom. Regis*, and had not been replevied, and the Corporation was admitted to a Fine, 4 *Edw.* 3. Claims of Liberties before Justices in Eyre.

Upon an Information for a Riot in *Canterbury*, on not Guilty pleaded, 24 Jurors were returned on a *Venire Facias* to the Sheriffs of the City, which is a County of it self; a *Distingas* was awarded, upon which a special Return was made, that King *James* by his Letters Patent, dated, &c. granted to the Mayor and Commonalty of the said City, and their Successors, that the said City should be a free City, and that the Mayor and Commonalty of the said City and Citizens thereof should be a Corporation *in re nomine & facto*, by the name of

Exemption not
to be of any
Jury out of
their Corpora-
tion.

of the Mayor and Commonalty of the City of *Canterbury*, and that by the same name they should have a perpetual Succession; and further granted, that they, nor any of them should not be constrained or compelled to appear before the said King, his Heirs, or Successors, or before any Justices of the said King, his Heirs or Successors out of the said City, the Liberty or Precincts thereof, or any Jury, Assize, Recognition or other Inquisition whatsoever, for, or in answer of any Felony, Murder, Offence, or Criminal whatsoever (High-Treason excepted) falling, arising, or happening within the said City, Precincts, or Liberties thereof. And he farther returned, that after the receipt of the said Writ of *Distringas* he received the Kings Writ of Allowance to him directed, and further returned, that the Jurors are all Citizens and Freemen of the said City, and so he desisted to distrain on them, and did not return any Issues upon them according to the purport of the said Writ of Allowance.

Writ of Allow-
ance.

Quest. 1. Whether the Exemption here returned will extend and hold place in *casu Regis*, where the King is the sole and immediate Party; altho the words *licet tangent nos* are not in the Charter, yet there are words tantamount.

Quest. 2. Whether they come in time to have the benefit of this Exemption allowed them?

When such pri-
vilege to be de-
manded.

But the Court held that this Privilege did not come properly before them upon the Sheriffs return, but that the Jurors being Freemen ought to demand it severally upon their Appearance on the *Distringas*; yet it seemed hard, that the Sheriff was fined 100 *l.* for if after a Writ of Allowance served on him, and the Charter shewn him, he should not return the Exemption, an Action upon the Case would lie against him, at the Suit of any Person,

Person, who being distrained to appear upon a Jury, had right to be exempted by the Charter; and the diversity taken in all other Books is, That upon the shewing of a Charter to the Sheriff, without a Writ of Allowance, the Sheriff is not obliged to take notice of it; but upon a Writ of Allowance he is bound to take notice of it, upon the Penalty of being liable to an Action, as aforesaid. *Co. 2 Inst. 120. Statute of Marlbr. c. 14.*

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